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Promotion and protection of human rights: human rights questions, including alternative approaches to improving the effective enjoyment of human rights and fundamental freedoms

**United Nations Human Rights Training and Documentation
Centre for South-West Asia and the Arab Region**

Report of the Secretary-General

Summary

The present report, submitted in accordance with General Assembly resolution 67/162, provides an overview of the training activities and regional consultations carried out by the United Nations Human Rights Training and Documentation Centre during its three years of operation. The report presents the achievements of the Centre in the context of the growing demand for its services, generated by the developments in the Middle East and North Africa, and the necessity of adequate resources being allocated to enable the Centre to discharge its mandate fully and effectively. Finally, the report provides an analysis of the challenges and future opportunities of the Centre and a specification of the resources required to realize such opportunities in accordance with the established training and documentation mandate.

* A/68/150.



I. Introduction

1. The United Nations Human Rights Training and Documentation Centre for South-West Asia and the Arab Region operates under the supervision of the Office of the United Nations High Commissioner for Human Rights (OHCHR). It was established by the General Assembly through resolution 60/153 of 2005 and is mandated "...to undertake training and documentation activities according to international human rights standards and to support such efforts within the region by Governments, United Nations agencies and programmes, national human rights institutions and non-governmental organizations". The main objective of the Centre is to strengthen human rights knowledge and skills within its region of operation.

2. The Centre is currently funded exclusively through extrabudgetary resources. In paragraph 5 of its resolution 67/162, the Assembly requested: "... the Secretary-General to provide funds and human resources from the regular budget of the United Nations, beginning in the biennium 2014-2015, to enable the Centre to respond positively and effectively to the growing needs in South-West Asia and the Arab region, to fulfil its mandate ...". In paragraph 6 it requested the submission of the present report on the implementation of the resolution.

3. The geographical mandate of the Centre covers 25 countries,¹ the majority of which are situated in the Arab region and three are situated in South-West Asia. The Centre thus covers countries falling under three geographical units of OHCHR (Africa, Middle East and North Africa, and the Asia Pacific region). Within its specific training and documentation mandate, the Centre works in close coordination with regional representatives in the field, heads of country offices, human rights units of peace missions and coordinators of regional units at OHCHR headquarters. The unique mandate of the Centre complements the broader mandates of existing OHCHR field presences through the development and provision of training and documentation adapted to the linguistic and capacity-building needs of these contexts.

4. The Centre is currently staffed by two international professionals and two national general service staff. Following the official inauguration of the Centre in May 2009, it commenced its regular activities in late 2010. During the first three years of its operation, demand for the services of the Centre has grown, while the level of resources available to the Centre has not grown proportionately. The United Nations High Commissioner for Human Rights, in her report to the sixty-seventh session of the General Assembly, drew attention to the resource gap and concluded that "... it has become clear that it [the Centre] will not be able to discharge its mandate effectively without the allocation of adequate resources on an ongoing basis from the regular budget of the United Nations."²

5. The Centre has conducted important work under its mandate on issues including United Nations human rights mechanisms, human trafficking, the media and human rights education. However, with adequate and sustained resources, its

¹ Afghanistan, Algeria, Bahrain, Comoros, Djibouti, Egypt, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, Yemen and State of Palestine.

² *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 36 (A/67/36)*, para. 71.

achievements to date could be further developed and its activities could be expanded to cover more human rights issues and reach more beneficiaries in all the countries covered by the Centre.

II. Functions of the Centre

6. The host country agreement, signed in 2008 between OHCHR and Qatar, refers in article IV to General Assembly resolution 60/153 in noting that the Centre will contribute to "... the continuing cooperation and assistance of the Office of the United Nations High Commissioner for Human Rights in the further strengthening of the existing regional arrangements and regional machineries for the promotion and protection of human rights, in particular through technical cooperation which is aimed at national capacity-building, public information and education, with a view to exchanging information and experience in the field of human rights". Accordingly, article V of the host country agreement further elaborates on the functions of the Centre and includes the following:

- (a) Provide training and expertise on reporting procedures to treaty bodies, disseminate human rights information, legislative reviews, train law enforcement officials, assist in preparing user-friendly manuals and tools and train the trainers, government officials, relevant professional groups and other stakeholders;
- (b) Develop information and documentation systems on human rights;
- (c) Work with national human rights institutions;
- (d) Work with civil society organizations;
- (e) Raise public awareness of human rights;
- (f) Execute training and documentation-related activities with regional and subregional intergovernmental organizations; these may include the League of Arab States, the Gulf Cooperation Council, the Union of Maghreb States and the Organization of Islamic Cooperation;
- (g) Deliver training to the United Nations staff working at the country and regional levels;
- (h) Advise States and non-governmental entities on human rights education programmes and appropriate professional training programmes.

III. Human rights training and documentation within the region

A. Impact of transitions in the Arab region

7. The Centre became operational two months prior to the emergence of the events commonly referred to as the Arab Spring. These developments reaffirmed the need for strengthening the training and documentation capacity in the region. In general, strengthening human rights knowledge within a vast area of operation is a long-term process that requires sustained resources and expertise. However, the following particular demands that have arisen, or increased in volume, during this period of time have had the effect of further underlining the need for human and

financial resources commensurate with the Centre's geographical coverage, and training and documentation mandate:

- (a) Heightened expectations that the Centre will fill the void relating to the paucity of Arabic language training materials, programmes and expertise;
- (b) Increased demand for various types of human rights documentation;
- (c) Need for further work to support the development of human rights culture and education across the region.

8. In fulfilling its training and documentation mandate to meet the regional needs, it is envisaged that the Centre will eventually make use of a number of working languages, including but not limited to Arabic, Farsi, and English. In order to reach the greatest number of beneficiaries of the Centre's activities, the Centre has so far prioritized the use of Arabic in its training and documentation materials. Thus an Arabic language website for the Centre has been established that, in addition to carrying news about the Centre and its activities, features individual country pages for all 25 States covered by the Centre containing essential United Nations human rights documentation.³ Furthermore, the Centre has published a regular newsletter, in Arabic and English, that is made available in paper print and digitally through the website. Work is ongoing for the website to provide searchable human rights training and reference materials.

9. Training and documentation activities are part of a strategy to foster respect for human rights and to strengthen emerging democracies. While the Centre continues to face challenges, at the same time, opportunities have been created to strengthen human rights knowledge and skills within its region of operation. The Centre operates on the basis of cooperation with Member States that request assistance. The transitions in the Arab region have led to increased openness for engagement with OHCHR, including through requests for technical cooperation and support.

B. Engagement of stakeholders in the work of the Centre

10. In respect to targeted support to human rights protection, the Centre plays a particularly important capacity-building role for a number of actors in government, national human rights institutions, civil society organizations, and diplomacy. The table below reflects participation by these actors in activities conducted by the Centre, the number of countries in which the Centre's events have been located and the range of nationalities that have participated in key trainings and consultations. In addition, the Centre has engaged with regional organizations, such as the Gulf Cooperation Council, and has contributed to the mainstreaming of human rights promotion and protection in the work of other United Nations entities. As an example, in May 2012, in Qatar, the Centre organized a gender training for OHCHR heads of field presences.

11. The number of participants at the events ranges from four participants at a capacity-building training in 2012 for the heads of the Omani Human Rights Committee, to approximately 150 civil society attendees at a symposium on press freedom held in Yemen in 2013. In 2011, a total of approximately 275 participants

³ <http://www.undohacentre.ohchr.org>.

benefitted from key activities of the Centre. In 2012, the number was 380 and, up until June 2013, the Centre estimated having had 300 participants at its key trainings and consultations.

Table
Geographical representation at trainings and consultations conducted by the Centre

	Number of times key consultations and trainings* were located in the country			Number of times countries/nationalities** were represented at key consultations and trainings		
	2011	2012	2013***	2011	2012	2013***
Afghanistan						
Algeria						2
Bahrain				3	4	2
Comoros						
Djibouti					1	1
Egypt				3	4	4
Iran (Islamic Republic of)						
Iraq				1	3	2
Jordan		2		3	3	3
Kuwait			1	3	4	2
Lebanon	2			4	3	
Libya		1			1	2
Mauritania				1	2	2
Morocco				1	1	
Oman	1			4	5	2
Palestine				3	3	4
Pakistan						
Qatar	3	6	2	6	7	3
Saudi Arabia				3	4	3
Somalia					1	1
Sudan	1			3	4	3
Syria						
Tunisia		1		1	5	2
United Arab Emirates	1	2		3	4	2
Yemen			3	1	2	5
Total	8	12	6	44	61	45

(Footnotes on following page)

(Footnotes to Table)

- * These are key trainings and consultations, and should not be taken as an exhaustive representation of activities.
- ** Participants include, but are not limited to, government officials, diplomats, law enforcement officials and representatives of NHRIs and civil society, including journalists. In addition, the table does not reflect the representation of regional organizations, such as the GCC, at some of these events.
- *** Key trainings and consultations implemented as at June 2013.

12. In response to a request for input to the present report,⁴ the Syrian Arab Republic provided a number of observations. It considers that the Centre has not been sufficiently active in the region to justify further allocation of resources, and that it has been used for the political purposes of the host country. As illustrated in the table, a number of events are held at the Centre's seat of operations in the host country of Qatar. Irrespective of its location, it remains a United Nations Regional Training Centre, reporting to OHCHR. As the table illustrates, many key consultations and trainings have been carried out in other countries, and, significantly, the vast majority of nationalities have on several occasions participated in trainings and events. The Syrian Arab Republic stressed that it is relevant to reiterate that the mandate of the Centre is solely to conduct human rights training and documentation. It is expressly reflected in article IV of the host country agreement that all activities of the Centre be aimed at fulfilling its mandate and achieving its objectives, and that it is guided by the principles of the United Nations, including impartiality, independence, objectivity and transparency.

13. In response to a request for input to the present report, Qatar pointed to the continued relevance of the Centre activities and reaffirmed its commitment to supporting the activities of the Centre. Qatar also considered the establishment of the Centre to be an important vehicle for strengthening international cooperation in the field of human rights capacity-building and awareness raising. Qatar indicated that it has benefited from the activities of the Centre, including those organized in Qatar, such as the training of the Qatari police on human rights and the study visits conducted by high schools to the Centre. According to Qatar, the sustainability of the Centre and its ability to fully discharge its mandate will depend on strengthening it with adequate staffing and a permanent operational budget that will allow it to continue to function independently and credibly. Qatar believes this can be done only through the inclusion of the Centre's financing in the regular budget of the United Nations, as requested by the General Assembly in its resolution 67/162.

14. In general, there is high demand for medium to advanced level human rights training in the region covered by the Centre. The perceived benefit of such training may be demonstrated by the fact that some Member States have elected to partially cover certain expenditures relating to activities implemented in their countries. Member States have consistently requested training in the following areas:

- (a) Reporting to the United Nations treaty bodies and the universal periodic review;

⁴ A request for input dated 13 June 2013 on engagement with the Centre was sent to the 25 countries covered by the Centre.

(b) Basic and advanced human rights trainings for diplomats, journalists, law enforcement officials and (mostly newly created) NHRIs;

(c) Human rights-based approach to combating human trafficking.

15. The Centre has increased its close cooperation with other OHCHR presences in the region, including in Yemen, Libya and Tunisia, with regard to training and documentation activities. The Centre's operation to date has produced a number of results, including:

(a) Strong relations forged with ministries of foreign affairs and NHRIs in the region;

(b) Requests received for country-based training;

(c) Development of a solid network of former participants who can be invited by the Centre to take part in future activities;

(d) Requests received for collaboration with United Nations country teams and other United Nations agencies, including the United Nations Development Programme (UNDP) and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

These are expected to benefit the Centre's future ability to effectively strengthen human rights knowledge and skills through implementation of its activities.

IV. Review of three years of operation

A. Overview of activities 2011-2013

16. The strategic priorities of the Centre are set within the overall thematic priorities of OHCHR. Thus the six thematic priorities that have informed the Centre's work are: countering discrimination; combating impunity and strengthening the rule of law and democratic society; pursuing economic, social and cultural rights and combating poverty; protecting human rights in the context of migration; protecting human rights in the context of violence and insecurity; and strengthening international human rights mechanisms.

17. In the context of the United Nations human rights programme,⁵ under the leadership of the United Nations High Commissioner for Human Rights, subprogramme 3, on advisory services, technical cooperation and field activities, provides the following objective: "To advance the promotion and protection of the effective enjoyment by all of all human rights through enhanced capacity-building, including through assistance to requesting States...". Of the expected accomplishments of the Secretariat in this respect, item (d) may be highlighted as being particularly relevant to the mandate of the Centre: "Enhanced support of OHCHR to human rights education and awareness-raising, including at the national level, at the request of States."

18. In September 2010, in Qatar, a workshop on the future vision of the Centre, with more than 60 regional experts and representatives of governments, CSOs and NHRIs, was held for the purpose of determining the principal needs of the region

⁵ See A/67/461.

for human rights capacity-building. The workshop identified key areas for intervention and its discussions provided much of the foundation for the development of the Centre's strategic priorities in terms of activities within the parameters of its established training and documentation mandate. The Centre's key training programmes are thus informed by the vision for the Centre discussed at the workshop.

19. Since its establishment and following the regional expert workshop, the Centre has been piloting regional programmes, some of which have also been adapted and implemented at the country level. The Centre's key training programmes cover:

- (a) Human rights and diplomacy;
- (b) Human trafficking;
- (c) National human rights institutions;
- (d) Human rights and media;
- (e) Human rights education;
- (f) Police training on human rights;
- (g) Other regional human rights consultations.

20. In summary, the key training programmes were developed with reference to OHCHR thematic priorities and the vision for the Centre discussed at the workshop in 2010. The functions of the Centre, under its mandate, include the development of information and documentation systems on human rights, capacity-building and raising awareness on human rights. Related to this is the support and advice provided to States and non-governmental entities in relation to human rights education programmes. Strengthening the capacity of Arab diplomats to interact with international human rights mechanisms was identified as a key area during the regional expert workshop. The participants further identified trafficking in persons as one of the pressing human rights issues in the region. The mandate of the Centre expressly provides for working with NHRIs and the importance of this was also stressed at the workshop. In the implementation of its activities the Centre promotes and utilizes the human rights-based approach, which has been a prominent part of its work in the context of human rights and media. Finally, there has been a particularly notable increase in the demand for training of law enforcement officials following developments in the Middle East and North Africa. In conducting its activities, the Centre seeks to ensure gender balance among participants and trainers and has found that this approach contributes to the success of its trainings and events.

1. Human rights and diplomacy

21. The regional training on human rights and diplomacy is a flagship activity of the Centre. On 19 April 2012, the Centre organized a validation meeting on the proposed training programme, which gathered a number of heads of human rights departments of ministries of foreign affairs from the Arab region. The meeting paved the way for further consultations with target groups and contributed to the design of a training programme tailored to existing needs. From 23 to 27 December 2012, in Jordan, 21 junior to medium level diplomats participated in the first Regional Annual Training of Arab Diplomats on Human Rights. This initial regional training focused on the use of the United Nations human rights mechanisms and

protection system and was positively received by participants. Following the training, Qatar, the United Arab Emirates, Yemen and the State of Palestine made requests for similar trainings to be carried out at the country level. On 25 March 2013, an evaluation meeting on the first regional training programme was held in Doha, where participants of the training gave constructive recommendations for further enhancing the effectiveness of the training, including through a stronger focus on case studies, increased use of new technologies and more exchanges of experiences with senior human rights diplomats.

22. The second regional training was organized in Kuwait, from 9 to 13 June 2013, in collaboration with the Kuwait Ministry of Foreign Affairs. While maintaining the focus on the United Nations human rights mechanisms and protection system, it integrated the experiences and recommendations from the first regional annual training. Thus, the Centre utilized the United Nations webcast of the universal periodic review consideration of the United Arab Emirates, in order to take participants through a real case study. It was attended by 23 participants, in addition to two senior Arab diplomats who shared their experiences on human rights and diplomacy.

23. The Centre has institutionalized regional training on treaty bodies, special procedures and the universal periodic review. This has led to an increased understanding of human rights mechanisms, including the new modalities of the Human Rights Council and of ways to improve engagement in the second cycle of the universal periodic review. In particular, participants developed a checklist of issues to be addressed prior to the universal periodic review, which they expressed was a useful tool to facilitate their engagement with that mechanism.

24. The positive reception of this training at the regional level has led several countries to request similar trainings at the country level. Thus, following a request, the Centre organized training for 25 Yemeni diplomats in Yemen, which was held from 11 to 14 May 2013.

25. As a result of these trainings, a number of Arab diplomats are better equipped to contribute to the promotion and protection of human rights through their work. In Yemen, this has led to changes in the basic and deployment training modules on consular work to reflect a focus on the protection of citizens' rights abroad. The Centre also established a network of the Arab diplomats who participated in its trainings.

2. Human trafficking

26. The Centre, as part of OHCHR, is committed to the human rights-based approach to combating trafficking in persons. The same commitment is echoed by the League of Arab States in the form of the Arab Initiative to Combat Human Trafficking, which was adopted in 2010. An agreement to integrate a human rights-based approach into the Arab Strategy for Combating Human Trafficking was a significant outcome of a regional consultation held on the human rights-based approach to combating human trafficking. This event was organized by the Centre, in collaboration with the Qatar Foundation for Combating Human Trafficking; it was held on 17 and 18 May 2011, and was attended by 70 participants from a variety of countries. The Arab Initiative to Combat Human Trafficking represents a formal initiative to strengthen the regional implementation of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women

and Children (the Palermo Protocol). The Initiative was amended to include explicit references to the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking. It also refers to OHCHR as an important partner in the fight against trafficking.

27. In December 2011, in collaboration with the Human Rights Department of the United Arab Emirates Ministry of Foreign Affairs, the Centre organized the first regional training based on the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking. The training was attended by law enforcement officials and members of national entities for combating human trafficking from 10 countries in the Arab region. On 5 and 6 June 2012, the Centre organized its second regional training workshop on a human rights-based approach to combating human trafficking in Jordan. The training, which focused on victims' rights, was attended by 26 participants from 18 countries in the Middle East and North Africa.

28. On 16 September 2012, the Centre was invited to participate, as an observer, in discussions relating to the adoption of a national strategy for combating human trafficking in Qatar. The Centre has since attended two additional meetings and given oral feedback on the strategy based on the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking.

29. From 26 to 28 November 2012, the Centre and the OHCHR country office in Tunisia, in collaboration with the Human Rights Department of the Ministry of Interior of Tunisia, organized a national event on human trafficking in Tunis. The first day consisted of a public symposium aimed at identifying the characteristics of trafficking in Tunisia. The following days were devoted to a training programme focused on skills-building in dealing with trafficking cases and on the development of a national plan of action to combat human trafficking. In that context, the sharing of experiences of the United Arab Emirates and Jordan in combating human trafficking was found useful by participants. The Centre's activity in Tunisia triggered a commitment to accelerate the adoption of the new national law on combating human trafficking.

3. National human rights institutions

30. In the region covered by the Centre there are nine NHRIs. Seven comply fully with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles)⁶ and have been granted "A" status accreditation by the International Coordinating Committee for National Human Rights Institutions. These include Afghanistan, Egypt, Jordan, Mauritania, Morocco, Qatar and the State of Palestine. Two NHRIs, in Tunisia and Algeria, have received "B" status accreditation.⁷ In addition, the Centre works with institutions and commissions that aspire to comply with the Paris Principles.

⁶ See resolution 48/134, annex.

⁷ International Coordinating Committee for National Human Rights Institutions accreditation status as at 19 July 2013; levels of accreditation by the Committee: "A" Voting member: complies fully with the Paris Principles; "B" Observer member: does not fully comply with the Paris Principles or has not yet submitted sufficient documentation to make that determination; "C" Non-member: does not comply with the Paris Principles.

31. In May 2011, the Centre undertook a mission to Oman for the purpose of assessing the capacity of new staff of the Omani National Human Rights Commission to carry out their tasks. The Centre subsequently developed a joint cooperation programme with the Commission to enhance the capacity of its staff and commissioners. Within this framework, the Centre organized a workshop in December 2011, aimed at introducing the new staff members of the Commission to the basic principles of human rights, the United Nations international protection system, the work of NHRIs and the Paris Principles. On 6 and 7 February 2012, the Centre organized a training workshop for four coordinators from the Omani National Human Rights Commission to enhance organization and planning methods within the Commission.

32. In close cooperation with the Qatari National Human Rights Committee, the Centre organized a training session on 20 and 21 May 2012 for the new members of the Committee and some of its staff. The training focused on strengthening the 17 participants' understanding of key human rights standards and principles, such as the international human rights system and the Paris Principles. Practical issues relating to the implementation of the international obligations of Qatar were also examined.

33. On 31 March and 1 April 2013, in cooperation with the Qatari National Human Rights Committee and the Arab Network of National Human Rights Institutions, the Centre organized a training workshop on the role of national institutions in the international mechanisms for the protection of human rights under the universal periodic review and treaty bodies. The workshop was attended by participants from 13 Arab countries and focused on the application of the Paris Principles, the role of international human rights mechanisms in relation with the work of the NHRIs, and enhancing knowledge of the international human rights mechanisms and of the universal periodic review recommendations. Participants emphasized the importance of regular trainings in areas such as report writing and complaint handling.

4. Human rights and media

34. A regional training programme for journalists was developed in cooperation with prominent media outlets such as Aljazeera and regional and international organizations, including UNESCO. The Centre implemented three such training programmes, in Lebanon (2011), Libya (2012) and Yemen (2013).

35. The first training programme took place in Lebanon on 4 and 5 May 2011, and targeted both international correspondents from Aljazeera and local journalists, who represented different newspapers and television channels. The event, which was attended by 25 journalists, was linked to the 3 May International Media Day and focused on the right to freedom of expression. Participants were introduced to the general notions relating to the human rights-based approach and were trained on how to reflect its practical implication in their work. As a result, several journalists from Aljazeera developed media reports using the human rights-based approach.

36. The second training programme was organized from 3 to 7 May 2012, in Libya. The 47 participants included journalists and representatives of civil society organizations, who were trained on human rights issues, including transitional justice and economic, cultural and social rights.

37. From 6 to 9 May 2013, the third training programme on human rights and media was organized in Yemen and was attended by 30 participants. In addition to the elements covered in the first training using the human rights-based approach, this training also focused on issues of particular relevance to Yemen, such as transitional justice and the right to access to information.

5. Human rights education

38. On 29 and 30 January 2012, in partnership with the Institute for the Development of Civil Society, a Sudanese non-governmental organization, the Centre held an event designed to discuss efforts in Arab countries to integrate human rights education into higher education, in accordance with the Plan of Action for the second phase (2010-2014) of the World Programme for Human Rights Education.⁸ Participants discussed the current situation of human rights education in the region, and exchanged information on their experiences in developing relevant programmes. This activity led to the creation of an informal network of national coordinators for the implementation of the Plan of Action and the Human Rights Education Strategy of the League of Arab States.

39. On 21 to 22 December 2011, in Lebanon, the Centre organized the Regional Consultation on the Development of University Graduate Programmes on human rights. The consultation was attended by academics from the Arab region and representatives of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law. Discussions focused on three themes: best practices in relation to the development of post-graduate human rights degrees and programmes; how to benefit from existing practices within the region; and how to create regular forums for coordination and experience and expertise sharing.

40. The participants also identified a number of key lessons learned. In particular, it was noted that the development of higher education human rights academic programmes requires a considerable amount of material and human resources; that continuous exchange of expertise (especially advanced expertise) is needed for the development of such programmes; and that there is a need to deal with a number of complex stages relating to the development of both graduate and post-graduate human rights programmes; for example, curriculum development, the development of basic human rights texts in the Arabic language, the acquisition of adequate library resources and advanced training of teachers and lecturers. The capacity of the Centre will need to be considerably increased to support the various activities needed for the development of human rights specialization at the university level.

41. In addition, the Centre conducted two workshops in 2012 for high school students in Qatar, where participants were introduced to concepts of human rights within the Universal Declaration of Human Rights⁹ and other international conventions, and were encouraged to develop a code of conduct within their schools reflecting the values of respect, acceptance, tolerance and collaboration. In 2013, the Centre, in partnership with Education Above All, a policy research and advocacy organization, initiated a separate project on the protection of the right to education during insecurity and armed conflict in the Middle East and North Africa region.

⁸ See A/HRC/15/28.

⁹ Resolution 217 A (III).

6. Police training on human rights

42. The first activities of the Centre on police training were conducted at country level, in Qatar. This approach was taken in recognition of the labour intensity of police training programmes. From 9 to 13 December 2012, in cooperation with the Human Rights Department of the Ministry of the Interior of Qatar, the Centre organized a training programme for mid-ranking members of the national police on human rights issues relating to law enforcement. The event was attended by 26 police officers from various departments of the Ministry of the Interior covering major functions such as human rights, drug prevention, nationality and travel documents, criminal evidence and information.

43. The expansion of the Centre's activities for police training encompasses developing strong regional programmes for training of trainers, including regional training for police in the GCC, which is expected to be implemented in the second half of 2013. Furthermore, subject to the availability of adequate resources, there is also scope to expand the national level training programmes to more countries.

7. Other regional human rights consultations

44. Through regional consultations with governments, NHRIs, academics, non-governmental organizations and other stakeholders, the Centre has provided a platform for discussions and exchange of experiences and expertise on issues including the impact of foreign debt on human rights and on the protection of the rights of minorities.

45. On 31 January and 1 February 2011, the Centre, in cooperation with the United Nations independent expert on the effects of foreign debt and human rights, organized the Asia Regional Consultation on the Draft General Guidelines on Foreign Debt and Human Rights in Qatar. The event was co-sponsored by the Government of Qatar and sought the views of various stakeholders from the public and private sectors, civil society and academia on the format and contents of the draft guidelines, with a view to improving them. Participants recommended a follow-up forum to focus on the implementation of the guidelines.¹⁰

46. On 19 and 20 November 2012, within the framework of the twentieth anniversary of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the OHCHR Research and Right to Development Division organized, with the support of the Centre, a consultation on the theme "Reflecting diversity in the process of constitutional reforms in the Middle East and North Africa". The consultation aimed at identifying good practices for the promotion and protection of minority rights, and at enhancing cooperation between human rights mechanisms at the international, regional and national levels, with a view to encouraging the integration of the protection of minorities into constitutions, legislation and policies. It was attended by 22 experts from various countries in the region. While noting the diversity of minority issues and situations in the region, the consultation recommended that a regular forum be established on minority rights issues. The consultation highlighted the need for awareness of the

¹⁰ See A/HRC/20/23; in June 2012, after further consultations at the regional and international levels, the Human Rights Council endorsed in its resolution 20/10 the Guiding Principles on Foreign Debt and Human Rights, which are designed to assist States and other relevant actors in the conduct of their respective activities relating to external debt.

complexity of minority rights issues and the need to monitor developments relating to minority rights in the Arab region.

B. Analysis of achievements and opportunities for future engagement

47. Since its establishment, the Centre has managed to gain visibility and credibility within the Arab region, mainly due to three factors:

(a) Anticipation that was created as a result of the process towards establishment of the Centre, which was achieved through the support of Member States;

(b) Heightened demand for human rights training and documentation following the political changes in several countries of the Arab region;

(c) Success of a number of targeted trainings and regional consultations, as measured by the feedback from participants and the subsequent requests for further activities.

48. All of the regional training activities are carried out once a year and national level activities are carried out to the extent possible. However, more capacity would enable the Centre to expand activities to the region of South-West Asia (Afghanistan, the Islamic Republic of Iran and Pakistan), where no activities have as yet been carried out, and to secure more participation from least developed countries (Afghanistan, Comoros, Djibouti, Mauritania, Somalia, Sudan and Yemen).

49. As the vast majority of countries covered by the Centre are Arabic-speaking, and owing to the acute need for training and documentation in that language, it has so far focused on training and documentation in Arabic, although in the long-term it is envisaged that the Centre will also have the capacity to provide human rights documentation, and provide trainings, in other major languages of the region.

C. Challenges and resource requirements

50. In order to ensure sustainability of the Centre activities, there is a need for more investment in developing training materials and tools, in Arabic and other major languages, and making them available to governments, NHRIs and CSOs to carry out similar training activities. The development of such materials will also help the Centre to better respond to individual member States' requests, as appropriate, including through extending its support through United Nations field presences (OHCHR, United Nations country teams) to carry out similar trainings at the country level.

51. As required by General Assembly resolution 60/153, financial resources for post and non-post costs were allocated by OHCHR from extrabudgetary funds. In the present global financial situation, the availability of sufficient extrabudgetary resources to maintain all existing activities of OHCHR cannot be guaranteed, and thus there is little possibility to further strengthen the Centre's resources or even to ensure its long-term viability.

52. The Centre currently functions with two professional level staff (one P-5 and one P-3) and two General Service support staff, with an annual budget of approximately \$1.1 million from extrabudgetary sources, including activity costs

and related operating expenses. In addition, Qatar, as the host country, provides the Centre with an office building, utility services and some office equipment. The regular budget resources requested would cover core staff posts, and part of the general operating costs and activities, as required for the effective performance of the mandate and sustainability of the core activities of the Centre, as requested by the General Assembly in its resolution 67/162.

53. In order to address the increased number of requests for assistance and the related workload in planning, developing and delivering training activities, a total of eight staff is needed. The staff would consist of five professional level staff members, including one P-5 Head of Office supported by one Human Rights Officer at the P-4 level and three Human Rights Officers at the P-3 level, and three general services staff. In accordance with OHCHR policy for regional offices and centres, the core structure of the Centre of one P-5, one P-4, one P-3 and one General Service staff, should be secured through regular budget funding.

54. General operating costs include communication costs, conference services, travel of representatives and staff members, external printing of documents, training fees provided for the training of staff members, contractual services, supplies, equipment, the rental of event premises, security charges, seminars and grants.

55. With the availability of adequate financial resources the Centre would have the opportunity to implement the following additional activities:

(a) The holding of two regional training sessions per year, within the strategic priorities of the Centre, for four days each in Doha or a chosen capital from the covered countries; the sessions would address 30 participants each from governments, national human rights institutions and civil society in the region;

(b) The convening of a two-day regional consultation, within the strategic priorities of the Centre, per biennium in Doha, or a chosen capital of countries covered in the region, for 30 participants including international and national experts;

(c) The development of a comprehensive documentations strategy, which would include maintenance of the Arabic website with regular updates (including costs of translation and uploads) and a digital library for best practices in the major languages of the region covered by the Centre.

56. Further, the requested resources would support the expansion of the following activities:

(a) Key regional trainings and their adaptation for use at the country level;

(b) Development and dissemination of professional and advanced human rights training materials (both paper and digital for its main training programmes) in Arabic;

(c) Use of modern technology in the delivery of future training starting with the transformation of the current skeletal website into an operational training tool (Arabic and Farsi);

(d) Development and implementation of training activities and materials targeting young human rights activists and defenders;

(e) Development of a roster of Arabic-speaking human rights experts at various levels for several purposes, including training, needs assessments and providing support to engagement with the United Nations human rights mechanisms;

(f) Development and implementation of a comprehensive programme aimed at the integration of human rights into higher education institutions in the region;

(g) Development and delivery of materials and activities within the region of South-West Asia.

V. Conclusion

57. In the three years of its operation, the Centre has demonstrated its capacity to implement a range of training and documentation activities relevant to its objective of strengthening human rights knowledge and skills within its region of operation. The Centre has managed to gain visibility and credibility. However, human and financial resources constraints have affected its ability to respond in a timely manner to increasing requests, to provide support to all the countries covered by its mandate and to appropriately reflect the particular human rights issues and needs of the region in the continuing development of its programmes. This was recognized by Member States when the General Assembly passed resolution 67/162, requesting the Secretary-General to allocate funds from the United Nations regular budget.

58. It has become clear that, owing to growing demands, the Centre will be unable to effectively discharge its mandate without the allocation of adequate resources. The minimum requirements that have been identified as necessary to effectively fulfil the mandate of the Centre should be viewed in the context of the geographical coverage of the Centre and the developments in the Middle East and North Africa, which have been a driving factor behind the increased demand on the services of the Centre. The significant challenges and opportunities facing these countries at this historical point in time require strengthened human rights knowledge and skills. If adequately equipped, the Centre could continue to provide valuable training and documentation services and be able to realize its full potential to play a crucial role in the region.



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**Promotion and protection of human rights: human rights
questions, including alternative approaches for improving the
effective enjoyment of human rights and fundamental freedoms**

Right to food

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on the right to food, Olivier De Schutter, submitted in accordance with Assembly resolution 67/174.

* A/68/150.



Interim report of the Special Rapporteur on the right to food

Summary

The present report outlines the contours of an emerging global right to food movement, focused over the past 10 years on the practical aspects of realizing the right to adequate food through appropriate legal, policy and institutional frameworks. The report takes stock of important progress made since the 1996 World Food Summit, highlighting emerging best practices and the role of key actors: Governments, Parliaments, courts, national human rights institutions, civil society organizations and social movements. A growing number of national right to food framework laws combined with rights-based national strategies seek to coordinate efforts across multiple sectors, improve accountability, and enable the participation of civil society and those affected by hunger and malnutrition in decision-making and the monitoring of results. At the same time, social protection systems are being redefined in terms of rights, moving away from the conception of social benefits as charitable handouts. Courts and other forms of grievance redress mechanisms, such as social audits, are playing an instrumental role in bringing about this change.

I. Introduction

1. The right to adequate food as a human right is not new. It was recognized in article 25 of the Universal Declaration of Human Rights and later reaffirmed in the International Covenant on Economic, Social and Cultural Rights (article 11), and through the right to life, in the International Covenant on Civil and Political Rights (article 6).¹ It was also included in other international instruments, including the Convention on the Rights of the Child (article 24 (2) (c) and 27 (3)), the Convention on the Elimination of All Forms of Discrimination against Women (article 12 (2)), and the Convention on the Rights of Persons with Disabilities (article 25 (f) and 28 (1)). Lastly, the right to food is recognized in a range of regional instruments such as the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (1988) (article 12), the African Charter on the Rights and Welfare of the Child (1990) (article 14 (2) (c)) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) (article 15). Although the African Charter on Human and Peoples' Rights does not explicitly refer to the right to food, the African Commission on Human and Peoples' Rights has protected the right to food by relying on the provisions relating to the right to life (article 4), the right to health (article 16), and the right to economic, social and cultural development (article 22).²

2. The human right to adequate food has nevertheless received renewed interest in recent years, particularly since its reaffirmation at the 1996 World Food Summit in the Rome Declaration on World Food Security. The World Food Summit committed to clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger,³ which resulted in the adoption by the Committee on Economic, Social and Cultural Rights of its general comment No. 12 on the right to adequate food (see E/C.12/1999/5), followed by the negotiation of the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (Right to Food Guidelines), adopted by member States of the Food and Agriculture Organization of the United Nations (FAO) on 23 November 2004.

3. At the time of the adoption of the International Covenant on Economic, Social and Cultural Rights, the right to food was more than a symbol, but hardly more than an aspiration. It has now become an operational tool and widely recognized as a key to the success of food security strategies. At the 2009 World Summit on Food Security, Heads of State and Government agreed on the Five Rome Principles for Sustainable Global Food Security (WSFS 2009/2). Reaffirming the right of everyone to have access to safe, sufficient and nutritious food, consistent with the progressive realization of the right to adequate food in the context of national food security (para. 16), they committed to strive for a comprehensive twin-track approach to food security that consists of: (a) direct action to immediately tackle hunger for the most vulnerable; and (b) medium- and long-term sustainable

¹ As the Human Rights Committee underlines, the right to life requires States to take all possible measures to eliminate malnutrition (see general comment No. 6 (1982), para. 5).

² See African Commission on Human and Peoples' Rights, communication No. 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, thirtieth ordinary session, October 2001, ACDPR/COMM/A044/1 of 27 May 2002.

³ 1996 World Food Summit Plan of Action, Commitment 7, objective 7.4.

agricultural, food security, nutrition and rural development programmes to eliminate the root causes of hunger and poverty, including through the progressive realization of the right to adequate food. In 2009, the right to food was also placed at the heart of the reformed Committee on World Food Security, the main international and intergovernmental forum for coordinated action against food and nutrition insecurity and hunger, whose vision is to strive for a world free from hunger where countries implement the Voluntary Guidelines for the progressive realization of the right to adequate food in the context of national food security (see CFS:2009/2 Rev.2, para. 4). The Comprehensive Framework for Action guiding the 22 United Nations agencies cooperating within the United Nations High-level Task Force on the Global Food Security Crisis was updated in September 2010 and now integrates a number of components relating to the right to food, recognizing the need for improved information and accountability systems (outcome 3).

4. The right to food has entered a new phase, in which implementation has become the central focus of efforts. The present report takes stock of progress made in this regard. It highlights emerging best practices and clarifies the contribution various actors can make to further strengthen this movement. It builds in part on expert meetings convened by the Special Rapporteur in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the FAO Right to Food Unit to assess progress made in Latin America and the Caribbean, Eastern and Central Africa, and West Africa. These meetings were held in Bogota on 9 and 10 June 2011, in coordination with the Second Forum of the Parliamentary Front Against Hunger in Latin America and the Caribbean, which convened in Bogota on 7 and 8 June 2011; in Nairobi on 4 and 5 April 2012; and in Dakar on 13 and 14 June 2013. In addition to members of national administrations, these regional consultations included parliamentarians and representatives of national human rights institutions, farmers' organizations and national and international non-governmental organizations.

5. The views of the Special Rapporteur were also informed by the 11 country visits he has undertaken since the beginning of his mandate, as well as by various working visits, including a recent visit to India from 2 to 5 July 2013 at the invitation of the right to food campaign. Finally, he benefited from the replies to a questionnaire sent on 5 February 2013 to all United Nations Member States.⁴

II. The right to food: a contribution at three levels

6. The right to food has more to do with modes of production and issues of distribution than with levels of food production alone. It primarily aims to guarantee to each person, individually or as part of a group, permanent and secure access to diets that are adequate from the nutritional point of view, sustainably produced and culturally acceptable. Such access can be ensured through three channels that often operate in combination: (a) self-production; (b) access to income-generating activities; and (c) social protection, whether informally through community support or through State-administered redistributive mechanisms. As such, depending on the population concerned, the right to food is closely related to the right of access to resources such as land, water, forests and seeds, that are essential to those who

⁴ Replies received are available from <http://www.ohchr.org/EN/Issues/Food/Pages/QuestionnaireGA68thSession.aspx>.

produce food for their own consumption; the right to work, guaranteed under article 6 of the International Covenant on Economic, Social and Cultural Rights; and the right to social security, protected under article 9 of the Covenant.

7. The right to food seeks to ensure access to adequate diets. Although access is necessary for individuals to be adequately nourished, it is not the only requirement. Obviously, food availability is also required (which necessitates appropriate functioning of markets to ensure that foodstuffs can travel from the producers to the markets and from food-surplus regions to food-deficit regions). Access to health-care services and sanitation, as well as adequate feeding practices, are also essential. In this regard, the right to food is also closely connected to the right to health and to what is described as adequate "utilization".

8. The contribution of the right to adequate food to the eradication of hunger and malnutrition operates at three levels. First, as a self-standing right recognized in international law and in a range of domestic constitutions, it imposes on States obligations to respect, protect and fulfil the right to adequate food. Second, the right to food encourages the transformation into legal entitlements of social welfare benefits that individuals or households receive under governmental food security schemes. Third, the right to food requires that States adopt national strategies to progressively realize the components of the right to food that cannot be immediately guaranteed. The significant progress achieved at each of these levels in recent years has been brought about by the interplay of different actors, including courts, parliaments, governments, national human rights institutions, civil society and social movements.

A. Obligations to respect, protect and fulfil

9. The right to food is increasingly stipulated in domestic constitutions, as recommended by Guideline 7 of the Right to Food Guidelines. In 1994, South Africa included the right to food in article 27 of the post-apartheid Constitution. Other countries have followed suit. The new Constitution of Kenya, approved by a popular referendum in 2010, states the right of every person to be free from hunger and to have adequate food of acceptable quality; like that of South Africa, the Constitution imposes on the State a duty to respect, protect, promote and fulfil that right. A 2011 study identified 24 States in which the right to food was explicitly recognized, although in about half of them, it was recognized for the benefit of a particular segment of the population only, such as children, and sometimes through another human right such as the right to life.⁵ Since that study was completed, articles 4 and 27 of the Constitution of Mexico were amended in order to insert the right to food. In El Salvador, Nigeria, and Zambia, processes of constitutional revision are under way that may lead to insertion of the right to food in the respective Constitutions.⁶ In other countries, such as Uganda and Malawi, ensuring access to adequate food and nutrition is defined as a principle of State policy.⁷ In

⁵ See Lidija Knuth and Margret Vidar, *Constitutional and Legal Protection of the Right to Food Around the World*, FAO Right to Food Unit (Rome, 2011), p. 15.

⁶ See, for example, First Draft Constitution of the Republic of Zambia (30 April 2012), article 62 (1) (c).

⁷ In Malawi, the right to food is also recognized as part of the right to development (see article 30 (2)).

Germany, the right to food is indirectly protected by the guarantee to a decent subsistence minimum so that everyone may live in dignity. In addition, among the countries that replied to the Special Rapporteur's questionnaire, a number, including Argentina and Norway, implicitly guarantee the right to food by granting constitutional rank or a rank superior to the Constitution to the International Covenant on Economic, Social and Cultural Rights and other international human rights treaties ratified by the State.

10. These are not symbolic advances. Victims of violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition (see E/C.12/1999/5, para. 32). The recognition of the right to food in domestic law empowers courts or other independent monitoring bodies to impose compliance with the obligations of the State to respect, to protect and to fulfil the right to food. Significant progress has been made in this regard in recent years.⁸

1. Obligation to respect

11. The obligation to respect requires that the State refrain from interfering with the existing levels of enjoyment of the right to food and that it guarantee existing entitlements, for instance, by ensuring that those who produce their own food be secure in their access to the resources, including land and water, on which they depend, or by ensuring that those who could have access to income-generating activities allowing them to purchase food are not denied such access.

12. Courts are generally well-equipped to enforce this obligation. In the case of *Kenneth George and Others v. Minister of Environmental Affairs and Tourism*, the High Court of South Africa ordered a revision of the Marine Living Resources Act, requiring the development of a new framework taking into account international and national legal obligations and policy directives to accommodate the socioeconomic rights of [small-scale] fishers and to ensure equitable access to marine resources for those fishers.⁹ This resulted in the adoption of a new Small-Scale Fisheries Policy in May 2012, which recognizes the importance of small-scale fisheries in contributing to food security and as serving as a critical safety net against poverty.¹⁰ In Honduras, the Sectional Court of Appeal in San Pedro Sula granted a constitutional remedy in the *Brisas del Bejuco* case in order to prevent the eviction of a group of small-scale farmers, referring to the obligation of the State to protect the right to food under the International Covenant on Economic, Social and Cultural Rights. The African Commission on Human and Peoples' Rights has protected the resources

⁸ See also Christian Courtis, "The right to food as a justiciable right: challenges and strategies", *Max Planck Yearbook of United Nations Law*, vol. 11, 2007, pp. 317-337; FIAN International, *Advancing the right to food at the national level: Some lessons learned*, Heidelberg, 2009; Jose Luis Vivero, "Hunger for justice in Latin America. The justiciability of social rights in hungry democracies", in Martín-López & Vivero, eds., *New challenges to the Right to Food* (Barcelona, Editorial Huygens, 2011); Christophe Golay, *Droit à l'alimentation et accès à la justice* (Brussels, Bruylant, 2012).

⁹ See Case EC1/05, High Court of South Africa (Cape of Good Hope Provincial Division).

¹⁰ See also the position of the Human Rights Committee, noting that if managed inequitably, a system of fishing quotas may result in discrimination, in violation of article 26 of the International Covenant on Civil and Political Rights: Human Rights Committee, *Haraldsson and Sveinsson v. Iceland*, communication No. 1306/2004, decision of 24 October 2007, CCPR/C/91/D/1306/2004 (about the Iceland Fisheries Management Act No. 38/1990).

on which the Ogoni people depend for their livelihoods against the damage caused by oil companies operating on their territories,¹¹ a position reaffirmed in 2012 by the Court of Justice of the Economic Community of West African States.¹² In all these cases, courts or quasi-judicial bodies have protected the right to food by prohibiting actions that would undermine the ability of individuals and communities to produce their own food.

2. Obligation to protect

13. The obligation to protect requires that the State protect individuals' enjoyment of the right to food against violations by third parties (namely, by other individuals or groups or private enterprises), including by establishing an adequate regulatory framework.¹³ Courts too may play a role by intervening where private actors violate the right to food. For instance, in a case on which the Special Rapporteur wrote a letter of allegation, the High Court of Uganda at Kampala ordered on 28 March 2013 that compensation be paid to 2,041 individuals who had been evicted from their land in August 2001, when the Government of Uganda gave the land to a German company to establish a coffee plantation. The Court not only held agents of the State liable but also stated that the investors "had a duty to ensure that our indigenous people were not exploited. They should have respected the human rights and values of people and as honourable businessmen and investors they should have not moved into the lands unless they had satisfied themselves that the tenants were properly compensated, relocated and adequate notice was given to them."¹⁴ This illustrates how courts are in a position to protect individuals against the action of third parties and how private enterprises also have a responsibility to respect human rights and to carry out human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights, as stipulated in the Guiding Principles on Business and Human Rights (see A/HRC/17/31, annex, paras. 6 and 17-21).

3. Obligation to fulfil

14. The obligation to fulfil has two components. First, States must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security (see E/C.12/1999/5, para. 15).

15. It is sometimes believed that, owing to the fact that certain dimensions of the right to adequate food can be realized only progressively, courts have no role to play in adjudicating claims concerning the alleged insufficiency of measures adopted by the State to discharge this third-level obligation. This betrays a fundamental misunderstanding about the notion of progressive realization. Progressive realization is the opposite of passivity. It requires immediate steps that are deliberate, concrete and targeted and that aim to "move as expeditiously and

¹¹ African Commission on Human and Peoples' Rights, communication No. 155/96 (see footnote 2).

¹² Court of Justice of the Economic Community of West African States, *SERAP v. Federal Republic of Nigeria*, decision of 14 December 2012.

¹³ See E/C.12/1999/5, para. 15. Under the International Covenant on Civil and Political Rights, see general comment No. 31 (CCPR/C/21/Rev.1/Add.13), 26 May 2004, para. 8.

¹⁴ See *Baleke and Others v. Attorney General of Uganda and Others*, Civil Suit 179 of 2002.

effectively as possible" towards the full realization of economic, social and cultural rights (see E/1991/23-E/C.12/1990/8, annex III, paras. 2, 8 and 9).

16. Moreover, while the notion of progressive realization acknowledges that some aspects of the right to food may be realized only over time owing to resource constraints, including budgetary constraints, States still have a core obligation "to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger" (see E/1991/23-E/C.12/1990/8, annex III, para. 10 and E/C.12/1999/5, para. 14). This obligation is immediate, as also reflected in the wording of article 11 (2) of the International Covenant on Economic, Social and Cultural Rights, referring to the fundamental right of everyone to be free from hunger.

17. Lastly, there are a range of measures that, in the circumstances of each case, may be identified as measures that are available to the State and that it therefore must take in order to discharge its duties to fulfil the right to food. For instance, recognizing that illicit capital flight undermines the capacity of States parties to implement the African Charter on Human and Peoples' Rights and to attain the Millennium Development Goals, the African Commission on Human and Peoples' Rights has called upon States parties to that Charter to examine their national tax laws and policies towards preventing illicit capital flight in Africa.¹⁵ Similarly, insufficiently progressive levels of taxation¹⁶ or the failure to adopt certain practices that have proved to be effective in comparable contexts may be considered a violation of the duty to fulfil. This would be the case, for example, if a State fails to call upon international assistance in situations of natural disaster or where, for whatever reason, it is unable with its own resources to guarantee the basic freedom from hunger. There is a growing consensus on the appropriate methodologies for concretely identifying when the resources dedicated to the fulfilment of economic and social rights are insufficient.¹⁷ The duty to move "as expeditiously as possible" towards that end is increasingly considered to lend itself to independent monitoring, including by courts.

18. Second, in situations of natural disaster or conflict, or "whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly" (see E/C.12/1999/5, para. 15). This component of the right to food has been invoked successfully before courts in recent years. In Nepal, the Supreme Court issued an interim order in 2008 for the immediate provision of food in a number of districts that food distribution programmes were not reaching,¹⁸ confirming and extending its initial order on 19 May 2010.¹⁹ It acted at the request of the non-governmental organization Pro Public, which invoked the provisions of the 2007 interim Constitution of Nepal guaranteeing the fundamental right to food sovereignty and the right to a dignified life, as well as the international obligations

¹⁵ See resolution 236 adopted by the Commission at its fifty-third ordinary session, 23 April 2013.

¹⁶ See A/HRC/13/33/Add.4 (mission to Guatemala), para. 87; A/HRC/13/33/Add.6 (mission to Brazil), para. 36.

¹⁷ See, for example, Centre for Economic and Social Rights, *The OPERA Framework: Assessing compliance with the obligation to fulfil economic, social and cultural rights* (New York, 2012).

¹⁸ See *Prakash Mani Sharma and others on behalf of Forum for Protection of Public Interest (Pro Public) v. Prime Minister and Office of Council of Minister and Others* (writ No. 0065-w0-149 of 2065 BS) (2008).

¹⁹ *Pro Public v. Government of Nepal* (writ No. 0149/065) (decision of 19 May 2010).

of Nepal to fulfil the right to food. In Mexico, relying on the recent amendment to article 4 of the Constitution and the 2009 Food and Nutrition Security Law of the Federal District, one homeless person obtained on 22 March 2012 an injunction from the First District Administrative Judge of the Federal District, directed in particular against the Secretariat for Social Development and the National Coordination Office of the "Desarrollo Humano Oportunidades" programme for a failure of the authorities to comply with their obligation to protect the rights to health, to food and to housing.²⁰ In May 2013, a juvenile court in Guatemala ordered 10 Government institutions to adopt a set of 26 specific measures to compensate damages caused to five children in two villages of Camotán, who were left malnourished as a result of the State's failure to provide support. The order was based on the 2005 Food and Nutrition Security Law and Guatemala's obligations under the International Covenant on Economic, Social and Cultural Rights. It included such restitution and compensation measures as food assistance, land distribution, water access, agricultural training and seed provision. Where the situation of individuals or communities is so desperate as to condemn them to hunger unless they are given support, courts routinely have relied on the right to life to impose such obligations to provide.²¹

19. Despite the significant progress made in recent years, some dimensions of the right to food remain underdeveloped. This is especially the case as regards its extraterritorial dimensions. According to the Committee on Economic, Social and Cultural Rights, the duties associated with the right to food extend to all situations, whether located on a State's national territory or abroad, over which a State may exercise influence without infringing on the sovereignty of the territorial State (see E/C.12/2000/4, para. 39, E/C.12/2002/11, para. 31 and E/C.12/2011/1). This is reaffirmed in the Maastricht Principles on the extraterritorial obligations of States in the area of economic, social and cultural rights, adopted by a group of international law experts on 28 September 2011, as well as in the Guiding Principles on Extreme Poverty and Human Rights, endorsed by the Human Rights Council on 27 September 2012 (see A/HRC/21/39, para. 61). Yet, the mechanisms allowing victims of violations of the right to food in extraterritorial situations are often non-existent or hardly accessible in practice. On the whole, however, the examples above show a remarkable progress of the right to food since the Right to Food Guidelines were adopted.

B. From charity-based schemes to legal entitlements

1. The principle

20. Policies aimed at eradicating hunger and malnutrition that are grounded in the right to food shall redefine as legal entitlements benefits that have traditionally been

²⁰ Information from the Government of Mexico.

²¹ See, for example, Inter-American Court of Human Rights, *Sawhoyamaya Indigenous Community v. Paraguay*, Judgement of 29 March 2006 (violation of the right to life for failure to provide food, water and health services to 19 members of a destitute indigenous community, including 18 children); Inter-American Commission on Human Rights, Precautionary Measure (20 June 2011): No. 121/11-14 Q'echi indigenous communities of the municipality of Panzós, Guatemala (to provide food and shelter to between 700 and 800 families of 14 Q'echi indigenous communities in the municipality of Panzós, Alta Verapaz, living in precarious conditions, without access to food and water, after they had been evicted from their land).

seen as voluntary handouts from States. The right to food requires that schemes providing benefits, whether guaranteeing access to food or promoting agricultural and rural development and national social protection floors, be consolidated into legal entitlements, clearly identifying the beneficiaries and providing them with access to redress mechanisms if they are excluded. In the same spirit, paragraph 7 of International Labour Organization (ILO) Recommendation No. 202 concerning national floors of social protection provides that national laws and regulations [establishing basic social security guarantees] should specify the range, qualifying conditions and levels of the benefits giving effect to these guarantees. Impartial, transparent, effective, simple, rapid, accessible and inexpensive complaint and appeal procedures should also be specified. Access to complaint and appeal procedures should be free of charge to the applicant. Systems should be in place that enhance compliance with national legal frameworks.²²

21. This transforms the relationship between the authorities in charge of delivering the benefits and the beneficiaries into a relationship between duty-bearers and rights-holders. The institutionalization of social protection schemes facilitates decentralized monitoring of their implementation and broader accountability. It acts as a safeguard against elite capture, corruption, political clientelism or discrimination. Various studies also show that, in the absence of such safeguards, farm inputs as well as extension services may benefit primarily the elites or the best-connected households, leaving aside the poorest producers or those living in remote areas, as well as women.²³

22. Such institutionalization will be effective provided a number of conditions are fulfilled: the beneficiaries must be informed about their rights under the programme; the claims mechanisms that they must have access to should be established at a decentralized level and should be free and accessible without excessive formalities and without language barriers for ethnic groups; the claims mechanisms must have the capacity to process these claims and the power to prescribe remedies; they must act in ways that are independent and impartial; and the claimants should not be exposed to retaliation for exercising their rights.

2. The role of institutional actors

23. Courts may contribute to strengthening benefits into legal entitlements. Following the filing of the public interest litigation Petition (Civil) No. 196/2001, *People's Union for Civil Liberties v. Union of India and Others (PUCL)*, the Supreme Court of India derived from the right to life mentioned in article 21 of the Constitution a series of requirements articulating how various social programmes should be expanded and implemented in order to ensure that the population is guaranteed a basic nutritional floor. This is to this date the most spectacular case of

²² Adopted at the 101st session of the International Labour Conference on 14 June 2012.

²³ See G. Mansuri and V. Rao, "Community-based and -driven development: A critical review", *The World Bank Research Observer*, vol. 19, No. 1 (2004), pp. 1-39; Jean-Philippe Platteau, "Monitoring elite capture in community-driven development", *Development and Change*, vol. 35 (2004), pp. 223-246; Lei Pan and Luc Christiaensen, "Who is Vouching for the Input Voucher? Decentralized Targeting and Elite Capture in Tanzania", *World Development*, vol. 40, No. 8 (2012), pp. 1619-1633; A/HRC/22/50, paras. 29-38.

a court protecting the right to food.²⁴ The Court prohibited the withdrawal of the benefits provided under existing schemes, including feeding programmes for infants, pregnant and nursing mothers and adolescent girls; midday school meal programmes; pensions for the aged; and a cash-for-work programme for the able-bodied, thus converting such benefits into legal entitlements.²⁵ Moreover, the Court expanded on and strengthened existing schemes, to ensure that they provide effective protection against hunger. For instance, it ordered that school meals be locally produced and be cooked and hot, whereas in the past children were fed with dry snacks or grain, and that preference be given, in the hiring of cooks, to *Dalit* women; it raised the level of old-age pensions; and, consistent with the idea that the schemes implement a constitutional right, it ordered their universalization, significantly expanding the number of beneficiaries. To supervise the implementation of its orders, the Court also established two independent Commissioners to monitor the implementation of programmes fulfilling the right to food throughout the country.

24. Providing a legal framework to public programmes that aim to ensure food security may strengthen these programmes and ensure that they are maintained across time. The recent developments following the "right to food case" in India provide an example. On 5 July 2013, the Government adopted the National Food Security Ordinance, based on a legislative bill initially tabled in 2011.²⁶ This new legislation is aimed at ensuring access to food throughout the life cycle for two thirds of the population of India through a combination of a variety of programmes that will henceforth be considered legal entitlements, making their removal unlikely even if political winds change.

25. From the point of view of the right to food, the provisions that ensure transparency and accountability in the implementation of the programmes are particularly noteworthy. As part of the reform of the Targeted Public Distribution System, all transactions relating to the distribution of foodgrains will be computerized, from the stage of procurement to the stage of delivery, in order to ensure transparent recording of transactions at all levels and to prevent diversion (sect. 12 (2) (b)); and the records are to be made available to the public (sect. 27). Periodic social audits must be performed on the functioning of the fair price shops, Targeted Public Distribution System and other welfare schemes and the findings will be publicized and lead to improvements (sect. 28 (1)). State governments are to put in place grievance redressal mechanisms, which may include call centres, helplines, designation of nodal officers, or such other mechanism as may be prescribed (sect. 14). Grievance Redressal Officers will be appointed at the level of each district, with a power to hear complaints regarding non-distribution of entitled foodgrains or meals and provide redress (sect. 15). Appeals against decisions by these officers may be filed before State Food Commissions established, within each State of the Union of India, to monitor and review implementation of the Ordinance (sect. 16). In addition to hearing appeals against decisions by District Grievance Redressal Officers, their powers include inquiring about implementation of the

²⁴ It is not unique, however. The expansion of social programmes can operate through the non-discrimination requirement: see, for example, *United States Department of Agriculture v. Moreno*, 413 U.S. 528 (1973).

²⁵ See Harsh Mander, "Food from the Courts: The Indian Experience", *IDS Bulletin*, vol. 43 (July 2012), pp. 15-24.

²⁶ See *The Gazette of India*, 5 July 2013 (Ordinance No. 7 of 2013).

Ordinance, whether upon receiving complaints or at their own initiative; making recommendations for improvements; and preparing annual reports to the State Legislature. Finally, vigilance committees are to be established at the various levels, from the fair price shop level to the state level, with a view to ensuring proper implementation and alerting the District Grievance Redressal Officer to any violation (sect. 29).

26. The National Food Security Ordinance could be further improved. Questions relating to access to productive resources for food producers are omitted, and too little attention has been paid to issues of nutrition. For destitute persons, Grievance Redressal Officers established at the District level may be, in fact, inaccessible. Although they are to exercise quasi-judicial investigatory powers (sect. 20), the State Food Commissions, whose six members are to be appointed as provided by each State government, may not present the required guarantees of independence and impartiality to function effectively as monitoring bodies. The Ordinance nevertheless provides an example of a food security law that defines as legal entitlements a large range of benefits that are aimed at ensuring that people are not denied access to food simply because they are poor, and establishes a set of accountability mechanisms at different levels.

27. Although remarkable, the example is of course not isolated. In fact, in most countries, social protection schemes and support to food producers are provided for in the law, and lack of implementation can be remedied by courts. However, formal redress mechanisms through the judicial system may be inaccessible to the destitute, who lack any legal literacy and have no support, or to communities who fear all organs of the State. Such groups must have access to alternative redress mechanisms.

3. Citizens as monitors

28. Social audits, in particular, have proved to be particularly useful to the poor and illiterate, both because they are more proximate and because they involve communities rather than individuals acting alone. They may take different forms. Government officials may have to report publicly to village assemblies on the use of funds allocated to certain programmes and on the allocations received by each of the beneficiaries. The revenues of and disbursements by public authorities at all levels may have to be published on the Internet, allowing non-governmental organizations to track instances of misuse or diversion of funds. In Rajasthan, the 2012 Right to Hearing Act and the accompanying Orders of 9 April 2013 provide that the filing of claims at the *panchayat* level will be facilitated through a Hearing Officer; the claimants must be given a receipt and strict deadlines apply for a written response to be provided by the administration; regular public hearings are organized at various levels, obliging officials to provide justifications in public and ensuring that claimants will not be intimidated as in face-to-face meetings.

29. Other examples include the parallel vigilance committees set up in 1992 by women from low-income neighbourhoods in Mumbai to monitor the fair price shops under the Public Distribution System; the public expenditure tracking surveys in Ghana, Uganda and the United Republic of Tanzania to identify diversion of funds in the health and education sectors; citizens' report cards in India, the Philippines and a range of African countries, through which citizens rate the quality of the public services they are provided; community score cards in the Gambia, Kenya and Malawi, which combine report cards with public meetings between communities

and public service providers; participatory audits in the Philippines or as conducted by Javanese farmers in Indonesia.²⁷ Beyond post hoc accountability, participation may extend to the design of policies and the ranking of budgetary priorities: in Brazil, following the example of Porto Alegre, a number of cities have elaborated participatory budgets.

30. Social audits can also be an effective means of empowering women within the local communities, if their views are sought expressly and if the community auditing exercise is considered valid only once they are adequately represented. Importantly, such social audits can go beyond the local-level service provider. Where the reason for faulty delivery resides in inadequate allocations from the centre, social audits can strengthen the position of local service providers vis-à-vis other levels of government.

31. Social audits can be effective provided a number of conditions are met, including: (a) adequate information to beneficiaries on the entitlements they have a right to claim; (b) wide publicity to ensure broad participation across all segments of the community; (c) adequate information on inputs or expenditures, making it possible to track discrepancies with actual delivery of services; (d) technical competence of an intermediary group to facilitate the process; and (e) choice of indicators and appropriate level of the community involved.

32. Laws guaranteeing a right to information can also contribute to improving accountability in the delivery of public programmes and may be key to social audits. Research shows the effectiveness of freedom of information or transparency laws in ensuring access by citizens to entitlements, as well as the benefits of such laws for the poor or those without political connections.²⁸ Right to information acts, such as those in Bangladesh, Brazil, Chile, India, Norway and Pakistan, may be used by beneficiaries to access information by filing an application to demand copies of records or by visiting a public office in order to examine the records and files. For example, in India, under the National Rural Employment Guarantee Act, the attendance sheet details the names of workers, how many days of work they have completed, and the quantity of work completed (on the basis of which payment is calculated), while under the Targeted Public Distribution System, beneficiaries can tally the distribution register with their ration card to prove that rations meant for them have been sold in the black market, allowing the detection of fraudulent practices.

C. Framework laws and national strategies in support of the realization of the right to food

33. The right to food also contributes to policies aimed at eradicating hunger and malnutrition by ensuring that such policies comply with the principles of participation, accountability, non-discrimination, transparency, human dignity,

²⁷ United Nations Educational, Scientific and Cultural Organization (UNESCO), *Social Audits for Strengthening Accountability: Building Blocks for Human Rights-based Programming: Practice Note*, (Bangkok, UNESCO Bangkok, 2007).

²⁸ See L. Peisakhin and P. Pinto, "Is transparency an effective anti-corruption strategy? Evidence from a field experiment in India", *Regulation & Governance*, vol. 4, No. 3 (2010), pp. 261-280; and Paul Lagunes, "Irregular Transparency? An Experiment Involving Mexico's Freedom of Information Law" (May 2009), available from <http://dx.doi.org/10.2139/ssrn.1398025>.

empowerment and the rule of law.²⁹ Each of these principles has a foundation in international human rights law, particularly in the right to participate in public affairs, in the right to an effective remedy, and in the prohibition of discrimination. Together, they serve to address the political economy questions that play such an important part in explaining the failure to achieve durable success in tackling hunger and malnutrition. Framework laws designed in conformity with these principles allow those affected by hunger and malnutrition to co-design the policies that seek to support them. National right to food strategies ensure that the efforts made are adequately coordinated and responsibilities for implementation properly allocated.

1. Framework laws

34. Latin America has been leading the movement towards the adoption of framework laws in support of the realization of the right to food. Food and nutrition security laws grounded in the right to food have been adopted in rapid succession in Argentina (2003), Guatemala (2005), Ecuador (2006 and 2009), Brazil (2006),³⁰ Venezuela (2008), Colombia (2009), Nicaragua (2009) and Honduras (2011). Most recently, following the launch in Mexico of the “Crusade against Hunger” — itself anchored in the right to food as inserted in the Constitution in 2011 — and after the Legislative Assembly of the Federal District of Mexico adopted a framework law in 2009, a decree adopted on 22 January 2013 by the Secretariat of Social Development established the National System for the Crusade against Hunger. The decree creates the Interministerial Commission for the Implementation of the Crusade against Hunger (composed of 19 ministerial departments/institutions); establishes a National Council of the Crusade against Hunger, an inclusive body allowing for a permanent dialogue with the private and social sectors, the academic community and international actors; and creates community committees composed of beneficiaries of social programmes.

35. This wave of legislative reforms is continent-wide. Similar laws are currently being considered in Bolivia (Plurinational State of), Costa Rica, the Dominican Republic, El Salvador, Haiti, Panama, Paraguay and Peru. To further promote these developments, the Latin American Parliament (PARLATINO), of which 23 Latin American countries are members, adopted a model Framework Law on the Right to Food, Food Security and Food Sovereignty on 1 December 2012 at its XVIIIth General Assembly. The Framework Law underlines the duty of the State to respect, protect and promote the enjoyment of the human right to food and to guarantee the mechanisms to make the right justiciable.

36. The remarkable progress achieved over the past decade in Latin America is the result of the combined efforts of civil society, social movements, parliamentarians and national human rights institutions. FAO support to the Hunger-Free Latin America and the Caribbean Initiative³¹ played a major role, together with the

²⁹ See Food and Agricultural Organization of the United Nations (FAO) (Right to Food Unit), *Guide to Conducting a Right to Food Assessment* (Rome, 2009), Box 2.1.

³⁰ See Presidential Decree 7272/2010, which includes the food and nutrition security policy guidelines implementing the “Zero Hunger” strategy.

³¹ The Hunger-Free Latin America and the Caribbean Initiative is supported by FAO through its regional office in Santiago, with the financial support of Brazil, Spain and other donors. It has recently been enriched by the establishment of a Regional Observatory on the Right to Food, which aims to promote research and dissemination on the right to food.

support given to this process by the FAO Right to Food Unit and OHCHR, including through its country and subregional offices in the region.

37. The dedication of parliamentarians is particularly noteworthy. The Parliamentary Front against Hunger serves as a network for sharing best practices among national parliaments to encourage the drafting and adoption of legislation that improves the protection of the right to food. A number of parliamentary fronts have also been established at the national level. These fronts have been strengthened by initiatives taken by such regional parliamentary institutions as PARLASUR, PARLATINO, the Andean Parliament, the Central American Parliament and the Forum of Presidents of Legislative Powers of Central America and the Caribbean. In November 2011, the Central American Parliament also created a Subregional Front.

38. Progress is being made on this front in other regions as well.³² The 2011 Zanzibar Food Security and Nutrition Act affirms the obligations to respect, protect and fulfil the right to food; establishes a National Food Security and Nutrition Council; and instructs sector ministers to account for food security and nutrition concerns in their policies and programmes and to include adequate resources in their budgets. In Malawi, a proposal was made by civil society organizations in 2010 for a national food security bill. In Mozambique, the Technical Secretariat for Food and Nutritional Security, an interministerial coordination body, led an inclusive process to the same effect. In Uganda, the Nutrition Action Plan 2011-2016 mentions the need to fast-track the adoption of the Food and Nutrition Bill, which should lead to the adoption of a Food and Nutrition Council. Senegal and Mali, in 2004 and 2006, respectively, adopted framework laws that are centred on the establishment of agricultural policies, allowing farmers' organizations to contribute to the design of such policies.³³ Although restricted to the agricultural sector and not extending to food security policies as a whole, they are a first and promising attempt to improve accountability and participation. In Indonesia, a Food Law (18/2012) was passed in November 2012 where the right to food, food sovereignty and food self-sufficiency are important pillars; a national food security agency should be established before 2015. Thailand adopted the 2008 National Food Committee Act, establishing a body composed of 11 ministers and four secretariats, as well as seven independent experts, tasked in particular to promote the adoption of food security strategies and to control, monitor and evaluate the outcomes of policies and strategies adopted in this area (section 10 (5)).

39. Such framework laws may set targets for Governments to achieve, allocating responsibilities for taking action to different branches of government and coordinating their action. Typically, however, these framework laws are procedural in nature: they establish institutions and define a process, without prejudging the outcome, and leaving it to the actors involved to design a cross-sectoral right to food strategy. These framework laws ensure that such strategies are designed and continuously monitored through an inclusive and participatory process involving government and civil society organizations. They do so by establishing national food security councils, often linked to the highest level of government and including as members both representatives from relevant ministerial departments and civil

³² For developments until 2011, see FAO Right to Food Unit, *Right to Food: Making it Happen: Progress and Lessons Learned through Implementation* (Rome, 2011).

³³ Agro-Sylvo-Pastoral Orientation Law No. 2004-16, 4 June 2004 (Senegal); Law No. 06-045 on Agricultural Orientation, 5 September 2006 (Mali).

society. It is not unusual for such councils to provide recommendations to an interministerial task force, ensuring intersectoral coordination across departments.³⁴ In Brazil, the National Council on Food and Nutrition Security, two thirds of the members of which represent civil society organizations, has a consultative nature, addressing recommendations to the Inter-Ministry Chamber of Food and Nutrition Security, the interdepartmental task force in charge of implementing the national food security strategy (see A/HRC/13/33/Add.6, para. 14). In other countries, such as Guatemala and Ecuador, the body can make binding decisions (for Guatemala, see A/HRC/13/33/Add.4).

40. The involvement of civil society and farmers' organizations in the design and implementation of policies aiming at the eradication of hunger and malnutrition ensures that such policies will not be driven by political expediency. However, one of the shortcomings of current food and nutrition security systems and legal frameworks is that they do not designate the judicial, quasi-judicial and administrative bodies to which claims relating to the violation of the right to food can be presented, nor are sanctions for non-compliance set out in national law. Framework laws could be strengthened by providing recourse mechanisms to the individuals or organizations aggrieved by their lack of implementation, for instance if the Food and Nutrition Security Council does not meet as provided or if its recommendations receive no response.

41. Such a legal framework may allow for the ring-fencing of resources, ensuring that the policies that are integrated within food security strategies will be funded, without being taken hostage by changing political majorities. In Argentina, for instance, Law No. 25.724 establishing the National Programme for Food and Nutrition Security sets up a Special Food and Nutrition Fund for the implementation of the Programme. The Fund is financed through annual budget allocations from the national budget and contributions from external donors. However, the Fund is of "intangible character": if the funds available appear insufficient to achieve the objectives of the Programme, the Chief of the Cabinet of Ministers may reallocate any additional funds needed. Similarly, the draft national food security bill prepared by civil society in Malawi anticipates the creation of a specific trust fund to finance food security policies placed under the umbrella of the council that the bill aims to create. In Mali, the 2006 Law on Agricultural Policy created a National Fund for Agricultural Development, to ensure adequate financing of agricultural policies. Similar provisions for special Funds are included in Nicaragua's 2009 Law on Food and Nutritional Security and Sovereignty, although implementation measures still must be adopted.

2. National strategies

42. The Committee on Economic, Social and Cultural Rights recommends that States parties to the International Covenant on Economic, Social and Cultural Rights work towards the adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks (see general comment No. 12, para. 21). Similarly, Guideline 3 of the FAO Right to Food Guidelines encourages

³⁴ Instead of a task force, a specific body may be in charge of such coordination. In Panama, Executive Decree No. 171 of 18 October 2004 created the National Secretariat for the Coordination and Monitoring of the National Plan on Food Security.

the adoption of a national human-rights based strategy for the progressive realization of the right to adequate food ... [which] could include objectives, targets, benchmarks and time frames; and actions to formulate policies, identify and mobilize resources, define institutional mechanisms, allocate responsibilities, coordinate the activities of different actors, and provide for monitoring mechanisms.

43. Such strategies fulfil three key functions. First, they identify the measures to be adopted, assigning responsibilities across different departments and imposing deadlines. This increases accountability: failure to deliver will be noticed and will be imputable to specific bodies that will be called upon to justify lack of implementation; and monitoring by independent bodies, including courts, national human rights institutions or food and nutrition security councils, is facilitated. Such monitoring and evaluation of food security policies ensure permanent feedback and thus learning from experience, so that the policies are constantly improved in the light of successes and failures in implementation.

44. Second, they allow for a whole-of-government approach, in which various policies in the areas of health care, education, employment and social protection, agriculture and rural development are coordinated. This favours the identification of synergies among programmes that fall under the responsibility of different departments, such as school-feeding programmes that source from local small-scale producers or food-for-work programmes that improve rural infrastructures. This coordinating function is also important in States with a federal structure, to improve alignment among policies pursued at different levels of government: in Mexico, one of the tasks of the Interministerial Commission for the Implementation of the Crusade against Hunger is to promote integrated agreements between entities at the federal and municipal level. Similarly, in an increasing number of States, food policy councils are being established at the local level, either at the initiative of municipalities or by citizens. These multi-stakeholder councils have a key role to fulfil in democratizing the food systems and in identifying synergies among different policy sectors at the local level: national-level strategies can support this by ensuring that such local-level initiatives are strengthened, rather than undermined, by various sectoral policies.

45. Third, multi-year strategies make it possible to combine short-term approaches (that prioritize access to food for the hungry) and long-term concerns (removing the structural causes of hunger), building bridges across them. This is especially important where, as is often the case for low-income countries, years of underinvestment in agriculture has led them to increase their dependency on food imports and food aid, leading to a vicious cycle in which imports and aid discourage local production, which in turn increases dependency, increasing vulnerability in a context of higher and more volatile prices on international markets. Such countries must gradually reinvest in local production and social protection, but the transition from a high dependency on food aid and imports must be managed across time: a multi-year strategy facilitates the management of such a transition.

46. Providing such a predictable framework is essential to attract investors and to allow the private sector to adapt to what the strategy entails. It is also important for public programmes to bridge the gap between short-term and ad hoc approaches and longer-term objectives. For instance, it has been found that school-feeding programmes work best when they are part of multi-year strategies, with predictable and secured funding. This favours investment in local food producers supplying the

programme and in the skills required to implement it, including cooking skills that must be mobilized within schools or community kitchens serving schools.³⁵

III. The right to food movement

A. Branches of government

47. The increasing recognition of the importance of a legal and policy framework grounded in the right to food reflects a growing understanding that hunger is not simply a problem of supply and demand, but primarily a problem of a lack of access to productive resources such as land and water for small-scale food producers; limited economic opportunities for the poor, including through employment in the formal sector; a failure to guarantee living wages to all those who rely on waged employment to buy their food; and gaps in social protection.

48. The remarkable success of Brazil in reducing child malnutrition rates over the past 15 years bears witness to the power of strategies such as "Zero Hunger" and participatory approaches. Beyond that example, recent research shows that countries that have made significant progress in reducing malnutrition present a number of common characteristics. First, they sought to adopt a multisectoral approach to combating hunger and malnutrition. Their strategies combined attention to agriculture, with the mainstreaming of nutrition in health-care policies, and coordinated policies in the areas of education, gender, water, sanitation and habitat, pro-poor economic development (both through employment and income generation for the poor and through social development), and trade. Second, in almost all cases, the political impetus at the highest level of government was a key factor. Change was achieved after Governments placed food and nutrition security at the top of the political agenda and adopted strategies specifically aimed at combating hunger and poverty. Third, civil society participation and empowerment were essential, contributing to the sustainability of policies across time and improving their acceptance and impact among affected populations. Fourth, multiphased approaches were the most effective, as allowed by multi-year national strategies combining both short-term interventions and long-term approaches to nutrition. Fifth, the establishment of institutions monitoring progress ensured that the political pressure remained present throughout the implementation phase of the strategy and that the resources were committed. Sixth, the continuity of financial investment from national resources, supplemented with external matching funds, was vital: one-time efforts, over short periods, failed to achieve significant impact.

49. These are the ingredients of success that approaches grounded in the right to food provide. All branches of government — legislative, executive and judiciary — have a responsibility to contribute to this implementation. As illustrated by the range of examples above, the protection of the right to food requires a legislative framework, policies implementing food security strategies, and enforcement through judicial means. Yet, even that may not suffice. Various veto points may make it difficult for political systems to create the requisite conditions for accountability. The poor are often a constituency that matters less to politicians. The poor may experience considerable difficulties in accessing judicial redress mechanisms, which

³⁵ World Food Programme, *Learning from Experience: Good practices from 45 years of school-feeding* (Rome, 2012), p. 35.

is why social audits matter. The role of other actors, national human rights institutions and civil society, is therefore essential.

B. National human rights institutions

50. National human rights institutions established in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles; see General Assembly resolution 48/134, annex) can play a crucial role in monitoring compliance with the right to adequate food and, where they have such competence, to examine complaints filed by aggrieved individuals.³⁶ In India, investigations by the National Human Rights Commission facilitated the work of the Supreme Court and that of the Commissioners of the Court by inquiring into the implementation of schemes securing livelihoods. In Colombia, the Office of the Public Defender presented a report on the implementation of the 2008 National Food and Nutrition Security Policy, recommending improvements to the legal framework and to mechanisms ensuring coordination. In Guatemala, the Office of the Human Rights Ombudsman has a specific mandate to monitor the implementation of the national food and nutrition security policy.³⁷ Its 2011 report regretted persistent coordination failures despite the establishment of the National Council on Food and Nutrition Security, and its 2012 report encouraged improved funding for food and nutrition security programmes, which remain highly dependent on foreign aid. In El Salvador, the Office of the Human Rights Ombudsman has prepared three national reports since 2007 proposing the development of an appropriate legal and political food and nutrition security framework to guarantee the right to food. National human rights institutions in a range of other countries, including Cameroon, Honduras, Malawi, Slovenia, South Africa and Venezuela (Bolivarian Republic of), monitor violations of the right to food. In Norway, an important function of the Parliamentary Ombudsman is to investigate complaints concerning social security benefits.

51. National human rights institutions, ombuds institutions or human rights ombudsmen may go beyond monitoring violations and reporting. They occasionally may seize judicial authorities or trigger action by food and nutrition security councils established under framework laws on the right to food. In Argentina, the National Ombudsman requested in 2007 that the Supreme Court order the national State and the Government of Chaco Province to provide food and drinking water to the province's indigenous Toba communities. In Brazil, a similar role can be played by the Public Ministry, which is composed of independent public prosecutors that can hold public authorities accountable in the implementation of programmes relating to food and nutrition.

52. The major advantages of national human rights institutions or equivalent institutions are their independence and the flexibility with which they can exercise

³⁶ The Committee on Economic, Social and Cultural Rights identified the various tools national human rights institutions could use to promote and protect economic and social rights (see E/C.12/1998/25); see also E. Brems et al. (eds.), *National Human Rights Institutions and Economic, Social and Cultural Rights* (Antwerp, Oxford, New York: Intersentia, 2013).

³⁷ See A/HRC/13/33/Add.4, para. 66. Pursuant to article 15 (j) of Legislative Decree No. 32-2005, the National Council for Food and Nutrition Security must follow up on the recommendations issued by the Ombudsman.

their mandates. This allows innovative solutions to develop. For instance, the South African Human Rights Commission supported the Southern Africa Food Security Change Lab, linking the various actors of the food chain with non-governmental organizations, academics, and Government officials in the search for innovative solutions that can improve the sustainability of the food chains (see A/HRC/19/59/Add.3, para. 32). National human rights institutions can also recommend the adoption of legislation protecting the right to food or ensure that national food security policies adopt a rights-based approach, as was done by the Uganda Human Rights Commission with regard to the Nutrition Action Plan 2011-2016.

C. Civil society and social movements

53. The mobilization of civil society and social movements has played a key role in support of the legal developments described in the present report. The 2011 reform that led to the insertion of the right to food in the Constitution of Mexico followed 20 years of advocacy by civil society groups, initiated in 1992 when 130 organizations forming the Mexican Front for the Right to Food presented to the national Chamber of Deputies a petition for the constitutional recognition of the right to food; the same coalition is now actively preparing a food and nutrition security framework law. Similarly, in Brazil, the proposal that led to the 2010 constitutional amendment recognizing the right to food was initially presented by a member of Parliament in 2003 and subsequently promoted by the President of the national Parliamentary Front for Food and Nutrition Security, Mr. José Nazareno Fonteles, with the support of various civil society organizations. In India, the right to food case before the Supreme Court led to the emergence of a broad network of individuals and organizations, the Right to Food Campaign, which has played an essential role in providing the court with information about the implementation of social programmes and in monitoring compliance with its orders.

54. In Haiti, a national platform of civil society organizations was a major driving force behind the adoption in March 2010 of the National Plan for Food Security and Nutrition elaborated by the National Food Security Council. In Nepal, the non-governmental organization Pro Public was instrumental in the right to food case brought before the Supreme Court, mentioned in paragraph 18 above. The Bangladesh Rehabilitation Assistance Committee, a well-known non-governmental organization, has also been instrumental in scaling up the anti-hunger social protection network. In the Dominican Republic and Paraguay, civil society organizations are playing an active role in support of the adoption of food and nutrition security laws.

55. Civil society actors can develop their own, original monitoring methods, as in Brazil where they established a National Rapporteur for the Human Right to Land, Territory and Food, whose legitimacy allows him/her to become an interlocutor with the authorities. A growing number of civil society organizations such as FIAN International, the International Federation for Human Rights, Rights and Democracy, the Center for Economic and Social Rights or the Social Collective for the Right to Food have produced reports assessing the implementation of the right to food reports in various countries.

56. The launch of the Global Network on the Right to Food and Nutrition in Vienna on 24 June 2013, on the occasion of the twentieth anniversary of the Vienna

Declaration and Programme of Action, further confirms the strength of the right to food movement, across different components of society and across regions.

IV. Conclusions and recommendations

57. The emergence of a global right to food movement is an opportunity to be seized. Together with the adoption of framework laws on the right to food and of rights-based national food strategies, it represents a chance to move towards policies that are designed in a more participatory fashion and are therefore better informed and reach all intended beneficiaries; that guarantee legal entitlements and are therefore monitored by the beneficiaries themselves; that ensure the appropriate coordination and synergies — between the short-term aim of eradicating hunger and the long-term objective of removing its causes, between different sectors of government, and between the local and the national levels. The right to food has come to the fore as Governments realize that their efforts to combat food insecurity and hunger have been failing and realize the urgent need to strengthen national legal, institutional and policy frameworks. As the examples highlighted in the present report show, the tools are starting to be put into use. However, additional steps must be taken to make effective and sustainable progress in the fight against hunger and malnutrition.

58. In particular, the Special Rapporteur encourages:

(a) Governments and parliaments, at the national level, to work towards the adoption of right to food framework laws and to explore the option of including the right to food in national constitutions, seeking inspiration from the experiences of other countries, including the best practices identified in the present report;

(b) Governments to design multi-year, multisectoral national strategies for the realization of the right to food that are adequately funded and involve all relevant sectors and departments and are designed on the basis of inclusive and participatory processes;

(c) Civil society and social movements to form broad-based national networks to enable them to contribute more effectively to policymaking and monitoring, including through their representation in inclusive national right to food/food and nutrition security councils;

(d) Courts to recognize the justiciable nature of the right to food, in all its dimensions, as illustrated by the examples collected in the present report;

(e) States to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the entry into force of which will further encourage the development of a jurisprudence protecting the right to food;

(f) National human rights institutions and other comparable independent mechanisms to integrate more fully the right to food in their work, assigning human and financial resources to that endeavour;

(g) Non-judicial accountability mechanisms to be established in the form of social audits that can operate through community-based monitoring at the local level;

(h) National social protection systems to redefine benefits as legal entitlements so that individual beneficiaries are informed about their rights under social programmes and have access to effective and independent grievance redressal mechanisms;

(i) The FAO Committee on World Food Security to serve as a catalyst to accelerate progress towards the establishment of legal, institutional and policy frameworks that are conducive to the full realization of the right to food for all, and to use the review of the implementation of the Right to Food Guidelines at its forty-first session in 2014 to encourage all member States to make effective use of the right to food to eradicate hunger and malnutrition;

(j) States, in order to ensure consistency between domestic policies aimed at the full realization of the right to food and external policies in the areas of trade, investment, development and humanitarian aid, and in accordance with the Guiding Principles on Extreme Poverty and Human Rights, to develop mechanisms that ensure that the right to food is fully taken into account in those policies.



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Promotion and protection of all human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Right to adequate housing

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context, Raquel Rolnik, submitted in accordance with Human Rights Council resolution 15/8.

* A/68/150.



Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context

Summary

In the present report, the Special Rapporteur on adequate housing builds on the findings of her previous report (A/67/286) and analyses two alternative housing policies — rental and collective housing — that can play a key role in the promotion of the enjoyment of the right to adequate housing for those living in poverty. She calls for a paradigm shift from the financialization of housing to a human rights-based approach and recommends that States promote various forms of tenure, including private and public rental, and collective tenure.

I. Introduction

1. In her previous report (A/67/286), the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context analysed the impact of prevalent housing policies implemented to promote access to homeownership for the urban poor. In the present report, the Special Rapporteur refers briefly to some previous findings while assessing two alternative housing policies — rental and collective housing — that can play a key role in the promotion of the enjoyment of the right to adequate housing for those living in poverty.

II. The rise of housing finance and the decline of non-market housing policies

2. In the late 1970s, a dramatic shift occurred in housing policies, starting with North America and Western Europe, followed later by some countries in Latin America, Asia, Africa and by formerly planned economies. The shift, calling for the transfer of activities from State control to the private sector and for unrestricted markets, soon gained hegemony, shaping the policies of States, international financial institutions and development agencies. The effects of the approach on housing policies, hence, on the right to adequate housing and related human rights across the globe have been striking.¹ The new role of the State as “enabler” led to creating conditions and institutions to support housing finance systems to promote homeownership under the neoliberal dogma of reliance on private property and market forces.²

3. Developed and developing countries have been steadily moving away from traditional supply-side assistance to demand-side housing policies. As a result, the financial sector and the private housing market became the primary mechanisms for allocating housing, by encouraging households to take credit, while the role of public housing and supply-side incentives has been gradually declining. Development assistance greatly influenced the expansion of market-based housing finance and boosted housing market activity in developing countries.³

¹ World Bank, *Housing: Enabling Markets to Work*, World Bank Policy Paper (Washington, D.C., 1993), 6.

² J. Doherty and others, *The Changing Role of the State: Welfare Delivery in the Neoliberal Era* (Brussels, European Federation of National Organizations Working with the Homeless (FEANTSA), 2005).

³ *Housing Finance Systems for Countries in Transition: Principles and Examples* (United Nations publication, Sales No. 05.II.E.8), p. 7; World Bank, *The Emerging Role of Housing Finance* (Washington, D.C., 1988).

4. A nearly unanimous belief in individual homeownership marginalized public rental housing; in many countries most of such housing was sold off.⁴ Similarly, the process led to radical changes in tenure structure; in many formerly planned economies owner-occupied housing now forms the bulk of the housing stock (for example, 96 per cent in Estonia and 77 per cent in Slovenia⁵ and more than 80 per cent in China⁶). Even in countries where massive privatization did not occur, the ideological transfer of responsibility for the provision of housing to the market has been accompanied by the view that individual homeownership is the best tenure option and the centre of all housing policies. Some countries with a long tradition of broad-based social rental housing redefined their systems to promote ownership and "free market" principles. With subsidized accommodation less available, some households that might have otherwise rented were pushed towards homeownership.

5. In her previous report (A/67/286, paras. 10-13), the Special Rapporteur highlighted how the deregulation, liberalization and globalization of housing finance have had major implications for housing and urban development, eventually leading to the global affordability and housing crisis we are witnessing today. Housing costs are disproportionately affecting the poor and in Europe represent an average of 41 per cent of the income of people at risk of poverty.⁷ The affordability crisis is compounded by the erosion, neglect and liberalization of non-market mechanisms for allocating housing resources, such as rental housing (public and private) and different forms of cooperative and collective ownership, among others.⁸

6. Paradoxically, side by side with the housing affordability and availability crises there is also a phenomenon of millions of empty or under occupied housing units, a clear reflection of the ineffectiveness of the current model. For illustration, there are nearly 1 million empty homes in the United Kingdom of Great Britain and

⁴ United Nations Human Settlements Programme (UN-Habitat), *Affordable Land and Housing in Europe and North America* (Nairobi, 2011), p. 9; see also M. Munro, "Evaluating policy towards increasing owner occupation", *Housing Studies*, vol. 22 (2007), pp. 243-260, 247; K. Scanlon and C. Whitehead, "Le logement social en Europe: tendances communes et diversités persistantes", in C. Lévy-Vroelant and C. Tutin, eds., *Le logement social en Europe au début du XXI^e siècle: la révision générale* (Rennes, France, Presses Universitaires de Rennes, 2010). Similar processes took place in developing countries although most countries never had a substantial public housing stock (see UN-Habitat, *Affordable Land and Housing in Africa* (Nairobi, 2011), p. 49).

⁵ Replies received from Estonia and Slovenia to a questionnaire sent by the Special Rapporteur to Member States on 5 April 2012 (hereafter "the questionnaire").

⁶ J. R. Logan, Y. Fang and Z. Zhang, "The winners in China's urban housing reform", *Housing Studies*, vol. 25 (2010), pp. 101-117.

⁷ Alice Pittini, "Housing affordability in the EU: current situation and recent trends", research briefing of the European Social Housing Observatory, No. 1 (European Federation of Public, Cooperative and Social Housing (CECODHAS Housing Europe)) (January 2012), p. 3. As opposed to 22.5 per cent of the disposable income for the general population. Utility and maintenance costs are one of the main housing affordability issues for low-income households.

⁸ Julie Lawson, Tony Gilmour and Vivienne Milligan, *International Measures to Channel Investment towards Affordable Rental Housing* (Melbourne, Australian Housing and Urban Research Institute, 2010).

Northern Ireland, of which 350,000 have been empty for more than six months;⁹ in the United States 14.2 million homes have been vacant for more than one year.¹⁰

7. In her previous report, the Special Rapporteur analysed the main housing finance policies implemented as a means of facilitating access of the poorest to homeownership. The sections below summarize the main findings with regard to the impact of those approaches on the right to adequate housing of those living in poverty.

A. Mortgage markets

8. In recent years market-based housing finance has rapidly spread throughout the world, mainly targeting the more affluent segments of society that have had the initial capital to take a mortgage, profiting lenders through the payment of interest. Traditionally, mortgage finance has been considered unattainable for the poor owing to issues such as lack of land titles, low and erratic income and employment in the informal sector.

9. However, during the past two decades new mortgage products were designed specifically for borrowers with low incomes or poor credit history¹¹ who were not eligible for regular mortgage finance, generating sub-prime loans. Although those lending policies were intended to enable access to credit for low-income households, they are extremely discriminatory: the poorer the credit taker, the higher the interest he/she has to pay. High-interest loans led to ever-increasing household indebtedness, economic insecurity, mortgage arrears and repossession rates. Poor households were forced to reduce expenditure on other essential needs, like food or medicines, in order to meet their housing debt.¹²

10. The adverse effects of housing credit growth on affordability have also been visible at the macroeconomic scale. Wider access to mortgage loans resulted in higher and more volatile housing prices.¹³ Increasing dependence on mortgage credit, private institutions and connection to broader developments in the global capital markets has overexposed national housing systems to the turbulence of global finance, raising levels of debt and concentrating risks among individual households. Countries that adopted an open system of mortgages, based on subprime loans, easily granted credit and the securitization of mortgages, have seen a serious crisis since 2008.¹⁴

11. The discrepancy between income levels and soaring housing and rental prices coupled with increasing unemployment have led to more payment default,

⁹ See *The Great British Property Scandal*. Available from <http://www.channel4.com/programmes/the-great-british-property-scandal/articles/about-the-campaign/>.

¹⁰ See <http://www.realtytrac.com/content/news-and-opinion/americas-142-million-vacant-homes-a-national-crisis-7723>.

¹¹ World Bank, *Thirty Years of World Bank Shelter Lending: What Have We Learned?*, Robert M. Buckley and Jerry Kalarickal, eds. (Washington, D.C., 2006).

¹² Mark Stevens, "Tackling Housing Market Volatility in the UK: a progress report" (York, United Kingdom, Joseph Rowntree Foundation, May 2011), p. 82.

¹³ International Monetary Fund (IMF), *Global Financial Stability Report: Durable Financial Stability — Getting There from Here* (Washington, D.C., 2011), p. 134.

¹⁴ See A/67/286 and A/HRC/7/16/Add.2, A/HRC/10/7, A/HRC/13/20/Add.4 and A/HRC/16/42/Add.3.

foreclosures and homelessness. These processes are exacerbated by the adoption of legal and institutional adjustments aimed at facilitating foreclosures, which have been promoted in recent years as "imperatives for developing a housing finance system".¹⁵ The crisis has disproportionately affected the poorest and most vulnerable, who were the last to join the mortgage markets and the first to suffer the consequences of the crises owing to their low resilience to economic shocks and low repayment abilities.¹⁶

B. Demand subsidies

12. A major component of the shift to demand-side housing policies has been the promotion of Government subsidies for privately produced residential units, mobilizing public resources and directing them to individual potential buyers with the idea of reducing Government intervention. The rationale behind the programmes is that low-income households will be able to finance their housing through the free market, with their own savings, assisted by a down-payment subsidy or a subsidized loan. Such types of subsidies include: (a) direct payments, either up front (to lower the amount of the loan, closing costs, down payment or insurance premium, or capital grant) or on a monthly basis; (b) subsidies tied to savings programmes; (c) interest-rate or interest-payment subsidies; (d) tax subsidies and exemptions tied to mortgage payments or real estate taxation.¹⁷ The last three types of subsidies are extremely costly, target mainly middle-income households and tend to have regressive effects (for example, in the United States the top 20 per cent of households earning over \$ 100,000 per annum gain 75 per cent of the tax relief on mortgage payments).¹⁸ Such policies indirectly discriminate against low-income households, in particular when implemented as the main housing policy, since their cost to national budgets is often enormous, while they mostly benefit mostly the more affluent households (see A/67/286, paras. 34-37).

13. The capital-grant-subsidy has been the most frequently promoted programme to target low-income households. The approach offers cash subsidies by private companies to cover part of the price of a dwelling for sale.¹⁹ The Chilean experience has been considered the model for other countries,²⁰ widely replicated in Latin America (Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala,

¹⁵ World Bank, *Housing Finance Policy in Emerging Markets*, Loic Chiquier and Michael Lea, eds. (Washington, D.C., 2009), pp. 94-95.

¹⁶ A. Colau and A. Alemany, *Vidas Hipotecadas* (Barcelona, Angle Editorial-Cuadrilátero Libros, 2012), pp. 21-22; see also concluding observations of the Committee on Economic, Social and Cultural Rights on the fifth periodic report of Spain (E/C.12/ESP/CO/5), para. 21.

¹⁷ Some Governments also encourage homeownership through tax exemptions on capital gains from property or on the imputed income from homeownership. Since tenants pay rent from their income after tax, homeowners gain by not having to pay rent and thereby accrue an additional income.

¹⁸ Matthew O'Brien, "Why the mortgage interest deduction is terrible", *The Atlantic* (17 July 2012).

¹⁹ Diana Mitlin, "New directions in housing policy", in *Global Urban Poverty: Setting the Agenda*, Allison M. Garland, Mejgan Massoumi and Blair A. Ruble, eds. (Washington, D.C., Woodrow Wilson International Center for Scholars, 2007), pp. 151 and 163; see also UN-Habitat, *Affordable Land and Housing in Latin America and the Caribbean* (Nairobi, 2011), p. 57.

²⁰ A. Gilbert, "Power, ideology and the Washington consensus: the development and spread of Chilean housing policy", *Housing Studies*, vol. 17, No. 2 (2002), pp. 305-324.

Mexico, Panama, Peru and Venezuela (Bolivarian Republic of).²¹ Outside of Latin America, the capital-grant approach has been implemented on a large scale in South Africa since 1994.²²

14. However, in the absence of land planning and regulations, a large amount of subsidies available in the housing market has led to significant increases in land and housing prices, a general problem of affordability for low-income households and long waiting lists.

15. Problems have also emerged with regard to the location of housing units, some exacerbating exclusion and segregation. In countries like Chile, subsidized housing developments were built in the urban periphery where land costs were lowest, but which lacked adequate infrastructure, schools, health facilities, transportation and employment opportunities and were characterized by low habitability.²³

16. Pursuant to articles 2 and 11 of the International Covenant on Economic, Social and Cultural Rights, and from a human rights perspective, Governments are required to make effective use of their available resources to ensure the enjoyment of the right to adequate housing, including by prioritizing the poorest. That obligation implies more than a roof since the right to housing entails access to an array of services and facilities that guarantee an adequate standard of living. Capital-grant subsidies have had a narrow focus on reducing only the quantitative deficits of houses without adequately incorporating a human rights view. In that sense, they have failed to address broader aspects of habitability, location, availability of services and infrastructure and non-discrimination. As one commentator observed, the new stock of subsidized housing often created a greater housing problem: "the problem of those 'with roofs'".²⁴

C. Housing microfinance

17. Until the 1980s, slum dwellers and the urban poor had not been a target for financial services.²⁵ However, in the 1980s private financial investors came to

²¹ Replies received from El Salvador, Guatemala, Mexico and Venezuela (Bolivarian Republic of) to the questionnaire; Inter-American Development Bank, "Sharpening the Bank's capacity to support the housing sector in Latin America and the Caribbean: background paper for the implementation of the social development strategy" (Washington, D.C., 2006).

²² Financial and Fiscal Commission of South Africa, "Building an inclusionary housing market: shifting the paradigm for housing delivery in South Africa — for an equitable sharing of national revenue" (January 2012).

²³ Pablo Trivelli y Compañía, "Urban structure, land markets and social housing in Santiago, Chile" (January 2010). See also Alfredo Rodríguez and Ana Sugranyes, eds., *Los Con Techo: un Desafío para la Política de Vivienda Social* (Santiago, Ediciones SUR, 2005); UN-Habitat, *Housing Finance Mechanisms in Mexico* (Nairobi, 2011); Fernando Jiménez-Cavieles, "Chilean housing policy: a case of social and spatial exclusion?", doctoral dissertation prepared for Technical University of Berlin, 2006.

²⁴ See Rodríguez and Sugranyes, *Los Con Techo* (see footnote 3 above).

²⁵ UN-Habitat, *Housing for All: The Challenges of Affordability, Accessibility and Sustainability: The Experiences and Instruments from the Developing and Developed Worlds* (Nairobi 2008), p. 11; see also UN-Habitat, *Financing Urban Shelter: Global Report on Human Settlements 2005* (Nairobi, Earthscan, 2005), pp. 99-100.

regard the poor as “bankable”,²⁶ and in the past 10 years, a growing number of housing microfinance programmes emerged offering loans to low-income households.²⁷ Housing microfinance loans are much smaller than mortgages, are typically granted for shorter terms²⁸ and are used mainly to finance progressive improvements to housing (for example, building sanitary amenities) and expansions to an existing dwelling.²⁹

18. Most housing microfinance initiatives originate in developing countries and emerging markets — Latin America,³⁰ Asia and, to a lesser extent, in Africa.³¹ Although microfinance agency interest rates are typically lower than those of informal moneylenders, they are much higher (between 20 and 50 per cent)³² than those charged by formal financial institutions and have much shorter maturities. The poorer the client, the more likely the housing microfinance agency will attempt to manage default risk by reducing the size as well as the time over which the client must repay the loan and by increasing the interest rate.³³ The use of floating rates of interest also leads to increases over the repayment period, sometimes up to double the original rate.³⁴ It is therefore questionable whether housing microfinance fosters housing affordability for the urban poor or whether, in some cases, it leads to increased indebtedness.

19. The small scale and the nature of most housing microfinance programmes, in particular their focus on profitability, prevent them from addressing other central aspects of the right to adequate housing — tenure security, location, infrastructure and the availability of services.

²⁶ Bruce Ferguson and Peer Smets, “Finance for incremental housing: current status and prospects for expansion”, *Habitat International*, vol. 34 (2010), pp. 288-289; World Bank, *Housing Finance Policy in Emerging Markets*, p. 395; C. K. Prahalad and S. L. Hart, “The fortune at the bottom of the pyramid”, *Strategy and Business*, No. 26 (first quarter, 2002), p. 1.

²⁷ UN-Habitat, *Financing Urban Shelter* (see footnote 25 above), pp. 103-104, 106-112; see also *Housing Finance in Emerging Markets: Connecting Low-Income Groups to Markets*, Doris Köhn and J. D. von Pischke, eds. (Berlin, Springer, 2011), pp. 33-35.

²⁸ Center for Urban Development Studies, Harvard University Graduate School of Design, *Housing Microfinance Initiatives: Synthesis and Regional Summary — Asia, Latin America and Sub-Saharan Africa with Selected Case Studies* (Bethesda, United States, Development Alternatives, May 2000).

²⁹ Bruce Ferguson, “Housing microfinance: a key to improving habitat and the sustainability of microfinance institutions”, *Small Enterprise Development*, vol. 14, No. 1 (March 2003), p. 21.

³⁰ Such as MiBanco in Peru, BancoSol in the Plurinational State of Bolivia, Banco Solidario in Ecuador, Banco Ademi in the Dominican Republic, Calpia in Honduras and Genesis Empresarial in Guatemala. UN-Habitat, *Financing Urban Shelter*, p. 106 (see footnote 25 above).

³¹ FinMark Trust, “Scoping the demand for housing microfinance in Africa: status, opportunities and challenges” (2009); see also Annika Nilsson, “Overview of financial systems for slum upgrading and housing”, *Housing Finance International*, vol. 23, No. 2 (December 2008), pp. 20-21; S. Merrill and N. Mesarina, “Expanding microfinance for housing”, *Housing Finance International*, vol. 21, No. 2 (December 2006), p. 21.

³² UN-Habitat, *Housing for All* (see footnote 25 above), p. 19.

³³ *Ibid.*, pp. 23-25.

³⁴ P. K. Manoj, “Prospects and problems of housing microfinance in India: evidence from ‘Bhavanashree’ project in Kerala State”, *European Journal of Economics, Finance and Administrative Sciences*, No. 19 (2010), pp. 178 and 190.

D. Summary

20. Housing finance policies based on credit for homeownership are inherently discriminatory against lower-income households and, at their best, promote affordable access for upper- and middle-income groups. Housing finance policies often "redline" the poor, who are required to pay much higher prices for financial services, exposing them to financial risks and indebtedness. At the same time, housing finance policies tend to focus solely on access to a roof while failing to effectively and comprehensively address the various elements of the right to adequate housing: location, access to infrastructure and services, habitability, cultural adequacy and security of tenure. At the macro level, the disproportionate use of such policies has contributed to price volatility and to the ongoing housing affordability and availability crises.

21. By contrast, countries that have adapted a more balanced housing policy, by encouraging a variety of tenure forms, such as Austria, Germany, and Switzerland, have suffered little from the recent property crises. According to Housing Statistics in the European Union 2010 and Eurostat 2010, 40 per cent of the population in Austria rents and 56 per cent owns their dwellings; 54 per cent of the population in Germany and 56.1 per cent in Switzerland are tenants. Such examples demonstrate that the division between the various forms of tenure and housing policies is not a "natural" or necessary choice but rather influenced by State intervention and regulation of the housing sector through the use of its available resources as well as through legislation and policies, including fiscal, taxation and subsidy measures.

22. The sections below provide a review of alternative housing policies for the urban poor that have been largely ignored by States in recent years — rental arrangements and collective and tenure — while analysing their compatibility with the promotion of the right to adequate housing of those living in poverty.

III. Alternative housing policies for the urban poor

A. Rental arrangements

1. Public and social rental housing

23. As mentioned earlier in the report, the availability of public rental housing in many developed countries has diminished substantively or disappeared altogether. Most developing countries have never had a substantive stock of public housing, and those that have privatized it. A partial exception is the Republic of Korea where, in 2002, the Government announced a plan to build 1 million public housing units for rent over the next decade.³⁵ Similar attempts have been made in recent years in Indonesia as part of a national programme for 1,000 Towers, some of which were intended for low-cost rental apartments (*rusunawa*), albeit with mixed results.³⁶

24. In recent years, some Governments have looked towards non-profit organizations to provide housing for the poor and to limit Government involvement

³⁵ R. Ronald and M-Y Jin, "Homeownership in South Korea: examining sector underdevelopment", *Urban Studies*, No. 47, No. 1, pp. 2367-2388.

³⁶ According to Indonesia's reply to the questionnaire. See also <http://www.en.indonesiainancetoday.com/read/30632/Govt-Fails-to-Meet-Rusunawa-Construction-Target>.

in the housing sector. Such institutions range from charities and housing associations to educational bodies. However, the social housing sector is substantive only in a handful of countries, mainly in Western Europe. As a result of cuts in funding to public housing and the ongoing global economic and financial crisis, waiting lists for social housing are increasing and the provision of affordable housing is not sufficient to keep up with the demand. In England, housing waiting lists augmented by 76 per cent between 2000 and 2011;³⁷ in France 1.2 million applicants are registered on waiting lists for social housing, and in Italy there are 630,000.³⁸

2. Private rental

25. Despite the decline in support for rental housing, the absolute number of tenants worldwide is rising. Across the world, approximately 1.2 billion people (around one third of the urban population and one sixth of all people in the world)³⁹ live in rented accommodation, the great majority in towns and cities. In many European countries the private rental sector, including informal, is playing a growing role for the poor, owing to inadequate access to social housing and greater constraints in accessing ownership.⁴⁰ In developing countries, the largest proportion of tenants is in urban Africa; in Asia, tenants comprise approximately one third of the urban population.⁴¹

26. Rental arrangements provide a range of options to low-income households in terms of location, improved mobility (particularly related to employment opportunities) and flexibility in terms of dwelling type (smaller or shared units that are not available in other tenure forms).⁴² Rental tenure enables low-income households to avoid house price risks, indebtedness and exposure to falling capital values and carries a lower transaction cost than homeownership.⁴³ Rental housing also provides a regular additional source of income for low-income small landlords, which can serve as a safety net against precarious employment or as a form of pension after retirement and old age. This is particularly important in the case of low-income settlements. However, construction of extensions for renting purposes is often discouraged by planning regulations and stringent building standards.⁴⁴

³⁷ Department of Communities and Local Government Households on local authorities' housing waiting lists. Available from <http://www.communities.gov.uk/housing/housingresearch/housingstatistics/housingstatisticsbyrentslettings/livetables/> (table 600).

³⁸ Pittini, "Housing affordability in the EU" (see footnote 7 above), p. 8.

³⁹ *World Urbanization Prospects, the 2011 Revision*.

⁴⁰ *Towards a Sustainable Private Rented Sector: the Lessons from Other Countries*, Kath Scanlon and Ben Kochan, eds. (London, London School of Economics, 2011), p. 8; see also Peter A. Kemp, "Low-income tenants in the private rental housing market", *Housing Studies*, vol. 26 (2011), pp. 1019 and 1020-1021. For example, in 2007 one in eight households in England were renting their home from a private landlord, but almost a quarter of those living in poverty were doing so.

⁴¹ Sunil Kumar, "The research-policy dialectic: a critical reflection on the virility of landlord-tenant research and the impotence of rental housing policy formulation in the urban Global South", *City*, vol. 15, No. 6 (2011), pp. 662, 663-664.

⁴² *Towards a Sustainable Private Rented Sector* (see footnote 40 above), p. 12.

⁴³ *Ibid.*, p. 139.

⁴⁴ Sunil Kumar, "Room for manoeuvre: tenure and the urban poor in India", paper presented at the Second Urban Research Symposium, 15-17 December 2003 (World Bank, Washington, D.C.); see also UN-Habitat, *Shelter Provision and Employment Generation* (Geneva, 1995).

27. The access of poor households to rental housing is currently impeded by costs, mainly as a result of rising rent prices and a shortage of affordable rental housing.⁴⁵ More and more households in Europe are facing difficulties in paying the rent (3.8 per cent of Europeans, and 8.6 per cent of those with income below 60 per cent of the median national income).⁴⁶ Rent affordability issues are more widespread in developing countries where rental housing is even less available. The rent-to-income ratio for African cities is more than twice that of cities in high-income countries at 39.5 per cent of income.⁴⁷

28. Significant increases in the supply of private rented housing are therefore necessary to help empower lower income tenants in the rental market and relieve affordability problems.⁴⁸ In addition, demand-side policies are required to increase the affordability of the rental sector for the poor. Although most Governments have focused their efforts on increasing individual homeownership, there are some good examples of supply- and demand-based policies aimed at encouraging the small-scale private rental sector and increasing rent affordability for low-income households.⁴⁹ Such interventions include taxation, direct or indirect subsidies, and regulation.⁵⁰ State policies towards the informal rental sector also affect the accessibility of the poorest to rental arrangements.

3. Taxation and supply-side subsidies

29. The tax treatment of private rental investment is a critical factor in either stimulating (Australia, France, Germany, the Netherlands, and New Zealand) or discouraging it (United States and Canada).⁵¹ Taxation for other tenure investment options also has an influence on the rental sector: favouring tax deduction or exemptions for homeownership (including non-taxation of capital gains and

⁴⁵ (Organization for Economic Cooperation and Development (OECD) "Housing markets and structural policies in OECD countries", OECD Economics Department working paper No. 863 (January 2011).

⁴⁶ Pittini, "Housing affordability in the EU" (see footnote 7 above), p. 8; see also "Kemp, "Low-income tenants" (see footnote 40 above), pp. 1026 and 1029.

⁴⁷ UN-Habitat, *Affordable Land and Housing in Africa*, (see footnote 4 above), p. 24.

⁴⁸ *Towards a Sustainable Private Rented Sector* (see footnote 40 above), p. 146.

⁴⁹ In most countries, the most landlords operate on a small-scale. See J. Rugg and D. Rhodes, "The private rented sector: its contributions and potential" (Centre for Housing Policy, University of York, 2008). For illustration, in Chile, 80 per cent of owners own one property, and another 10 per cent own two. Commercial investors in rental housing are only important in a handful of countries, including the United States, Switzerland (where pension funds play an important role because they are required to hold real estate as part of their portfolios, and rental apartment buildings are a popular asset for pension fund managers) and Russia (where the privatization process created a group of massive landlords — the former industrial companies that built housing stock for their workers. See also J. Hegedüs, M. Lux and N. Teller, *Social Housing in Transition Countries* (Oxon, Routledge, 2012).

⁵⁰ Steve Pomeroy, *Private Rental Policies and Programs: Review of the International Experience* (Ottawa, 1999), p. 107; see also Steve Pomeroy and Marc Godbout, "Development of the rental housing market in Latin America and the Caribbean", Inter-American Development Bank Discussion Paper (2011), pp. 10-11.

⁵¹ Pomeroy and Godbout, "Development of the rental housing market" (see footnote 50 above), p. 19; see also Australian Housing and Urban Research Institute, "What makes a landlord decide to invest and dis-invest in private rental housing?" (May 2010).

mortgage interest deductibility) encourages it, undermining the attraction of rental investment.⁵²

30. Some European countries (such as the Netherlands and Sweden) employ a rental subsidy system to encourage rental developers or private owners through reduced interest programmes.⁵³ The long-standing subsidization scheme in Germany for both the social housing sector and private investors laid the foundation for a large private rental housing market.

31. In Austria, a sustained combination of supply-side policies has resulted in a large housing stock with reasonable rents, allocated to middle-income groups with additional means-tested benefits for lower-income groups. By providing discounted building land, grants, public loans and tax favoured investment, the federal, regional and municipal governments have strategically promoted the development of limited profit, cost-capped, and cost-rent housing, catering to a range of households including low-income households.⁵⁴

4. Demand subsidies

32. Some countries have been implementing rent assistance programmes in order to address affordability problems (see A/HRC/13/20/Add.4, paras. 10 and 25).⁵⁵ However, evidence indicates that such initiatives, in the absence of other policies regulating markets and assisting recipients of housing allowances, are not sufficient to provide adequate and affordable rental housing for low-income households. In countries in which rental supply is limited, subsidies schemes actually lead to an increase in rental prices⁵⁶ and shortages of rental stock for low-income earners.⁵⁷ Low income households receiving housing benefits often face difficulties in finding and keeping habitable accommodation in adequate locations with access to services, despite the extra purchasing power, owing to the low value of the benefits (given the rise in rental prices) and discrimination against vulnerable groups in the private rental market (see A/HRC/13/20/Add.4, paras. 17-26).⁵⁸ In addition, means testing for housing benefits is often complicated, targeting is not always effective and allocation procedures encourage corruption.⁵⁹ The tight conditioning of housing benefits on income levels has been criticized for failing to reach all beneficiaries (for example, only 40 per cent of private renters living in poverty in England are in

⁵² Pomeroy and Godbout, "Development of the rental housing market" (see footnote 50 above), p. 20.

⁵³ According to the response received from Slovakia to the questionnaire on security of tenure sent by the Special Rapporteur on 22 March 2013.

⁵⁴ Wolfgang Amann, Julie Lawson and Alexis Mundt, "Structured finance allows for affordable rental housing in Austria", *Housing Finance International*, vol. 23, No. 3 (June 2009), p. 14.

⁵⁵ According to the response received from Finland to the questionnaire on security of tenure sent by the Special Rapporteur on 22 March 2013. In some countries, housing benefits took the form of vouchers — a method that has been used in the United Kingdom and in the United States for many years. See L. Winnick, "The triumph of housing allowance programs: how a fundamental policy conflict was resolved", *Cityscape*, vol. 1, No. 1 (September 1995), pp. 95-121.

⁵⁶ "Housing benefit cuts", Crisis Policy Briefing, May 2012. Available from <http://www.crisis.org.uk/data/files/publications/Crisis%20Briefing%20-%20Housing%20Benefit%20cuts.pdf>, 9.

⁵⁷ Dugald Monro, "Public rental Housing policy: learning the lessons from overseas", Research Paper 6, 1997.

⁵⁸ See also Kemp, "Low-income tenants" (see footnote 40 above), p. 1025.

⁵⁹ Council of Europe, *Housing Policy and Vulnerable Social Groups* (Strasbourg, 2008), p. 50.

receipt of housing benefit).⁶⁰ Furthermore, the substantial cuts in housing benefits currently applied in various countries as part of recent austerity measures are likely to exacerbate the problem (see A/67/286, para. 32).⁶¹

33. On the other hand, the cost of rent subsidies for low-income households is significantly lower than the cost of subsidies for homeownership. Moreover, for families with a very low and unstable income, rent subsidies can provide a better alternative than homeownership. Research done in Brazil, for instance, has shown that very low-income households tend to sell their private homes, in particular the very poorly located ones, and move back to informal settlements.

5. Rent legislation and rent control

34. One of the main means of securing affordability and tenure for low-income tenants in private rental arrangements is rent legislation, regulation and control.⁶² Rent regulation varies greatly between regions, but typically includes two main elements: (a) security of tenure, establishing a minimum duration of occupancy as well as limitations on the eviction of tenants; and (b) control on levels of price increase, intended both to preserve affordability and to preclude de facto economic eviction. Rent control regimes tend to establish the amount and frequency of rent increases, linking it to fiscal measures such as inflation rates.⁶³ In general, restrictions on rent increases are maintained only during sitting tenancy.⁶⁴

35. Critics of rent control and regulation claim that such measures produce inefficiencies, distort market values, reduce the housing supply and encourage corruption and low housing maintenance.⁶⁵ Rent regulation has also been criticized for not targeting low-income households since controlled rents and protected tenancies usually favour those who have lived in rental housing for years over potential new tenants,⁶⁶ and there is no mechanism to ensure that those benefitting from rent control are the low-income households.⁶⁷

36. In some countries, however, notably, Austria, Germany and Switzerland, and over the course of many decades, in some cities like New York and San Francisco in the United States (see A/HRC/13/20/Add.4, para. 44), rent regulation has had

⁶⁰ Dugald Monro, "Public rental housing policy" (see footnote 57 above); see also Kemp, "Low-income tenants" (see footnote 40 above), p. 1032.

⁶¹ For example in the United Kingdom (see Kemp, "Low-income tenants" (footnote 40 above), p. 1022). Funding cuts have contributed to the loss of over 150,000 vouchers in the United States between 2005 and 2007 (see A/HRC/13/20/Add. 4, para. 36).

⁶² S. I. Kalim, "Rent-control legislation and its impacts in Karachi", in *Rental Housing: Proceedings of an Experts Group Meeting* (Nairobi, United Nations Centre for Human Settlements, 1990), pp. 186 and 188.

⁶³ Marietta Haffner, Marja Elsinga and Joris Hoekstra, "Balance between landlord and tenant? A comparison of the rent regulation in the private rental sector in five countries", for the European Network for Housing Research 2007 International Conference on "Sustainable Urban Areas"

⁶⁴ Pomeroy and Godbout, "Development of the rental housing market" (see footnote 50 above), p. 16.

⁶⁵ "The great Manhattan rip-off", *The Economist* (5 June 2003); see also *Towards a Sustainable Private Rented Sector* (see footnote 40 above), p. 10.

⁶⁶ A. Malpezzi, "Rental housing in developing countries: issues and constraints, in *Rental Housing: Proceedings of an Experts Group Meeting* (Nairobi, United Nations Centre for Human Settlements, 1990), pp. 104 and 113.

⁶⁷ S. Kumar, "Landlordism in Third World urban low-income settlements: a case for further research, *Urban Studies* (1996), pp. 768-769.

favourable effects on stabilizing the rental sector and maintaining access by low-income households to urban housing that is well located.⁶⁸ In Switzerland, rental investments have been maintained even though rent controls reduce the housing costs of long-standing tenancy, and legislation prevents arbitrary eviction and the exploitation of temporary shortages.⁶⁹ In Quebec, Canada, a consistent and well-established regulatory system, with a reasonable balance between protecting tenants and encouraging investment, has been retained.⁷⁰ In Uruguay, the Government has introduced a different tool to balance the interests of landlords and tenants, through a fund that provides guarantees to cover costs arising from the non-payment of rent and service payments (*Fondo de Garantía de Alquileres*).⁷¹

37. Such examples demonstrate that it is possible to design rent regulation and tenancy protection mechanisms that do not distort or discourage the private rental market but actually encourage it. A well-regulated rental market can promote the goals of protecting tenants, particularly low income, and encouraging rental housing simultaneously. On the other hand, the elimination of rent controls and the easing of eviction procedures, has rarely led to more investment in the rental market but has actually skewed the market in the direction of homeownership.⁷²

38. Although States do not have the obligation to directly provide adequate housing to all, they have the obligation to protect against abuses of human rights by third parties and to adopt the necessary measures to enable and assist individuals in enjoying their human rights. When housing provision is transferred to third parties (the private rental market), the State should regulate the market in order to protect against human rights abuses (such as forced evictions or economic eviction and rental price "bubbles") and to create an enabling environment for the realization of the right to adequate housing, with particular focus on the poorest and most marginalized.⁷³ As indicated by the Committee on Economic, Social and Cultural Rights in paras. 8 (c) and 17 of its General Comment No. 4, tenants should be protected by appropriate means against unreasonable rent levels or rent increases.

6. Informal private rental housing

39. Access to urban land for housing, especially serviced land, is one of the major problems faced by developing countries. Informal access to land, increasingly through rental arrangements, is becoming a key form of accessing affordable housing for the poor. A large share of urban landlords in developing countries therefore operate informally in unplanned settlements.⁷⁴

⁶⁸ See *Towards a Sustainable Private Rented Sector* (see footnote 40 above), p. 145.

⁶⁹ E. Werczberger, "Home ownership and rent control in Switzerland", *Housing Studies*, vol. 12, No. 3 (1997), pp. 337-353.

⁷⁰ Pomeroy and Godbout, "Development of the rental housing market" (see footnote 50 above), pp. 16-18.

⁷¹ See Uruguay, "El alquiler como alternativa de acceso a la vivienda", XIX Asamblea General de Ministros y Autoridades Máximas de Vivienda y Urbanismo de América Latina y el Caribe, September 2010. See also <http://www.mvotma.gub.uy/alquiler/garantia-de-alquiler>.

⁷² UN-Habitat, *Affordable Land and Housing in Africa* (see footnote 4 above), p. 50.

⁷³ See Guiding Principles on Business and Human Rights (A/HRC/17/31, annex); see also report of the Special Rapporteur on the right to safe drinking water and sanitation (A/HRC/15/31, paras. 18-21).

⁷⁴ UN-Habitat, *Affordable Land and Housing in Africa* (see footnote 4 above), pp. 27-28 and 37.

40. A variety of rental sub-markets exists,⁷⁵ including rooms in inner city tenements, custom-built tenements, rooms in informal settlements, renting land and building rental units to let or building units in the backyard of dwellings. The trend is particularly noticeable in Latin America, where informal owners enlarge their homes to house tenants in order to rise their incomes.⁷⁶ In Sub-Saharan Africa, taking in lodgers within the existing structure is common in several countries.⁷⁷ The transformation of Government-built housing to include rental units is widespread in Northern Africa as well as Sub-Saharan Africa.⁷⁸ In Asia, informal rental ranges from unlicensed high-rise buildings that accommodate migrant workers in the "urban villages" of China to rented plots in some Indian and Thai cities where tenants build their own shelter.⁷⁹ Most of those options — ignored by regulations — offer very precarious conditions to tenants.

41. Most informal landlords let property that lacks a building license, do not issue written contracts,⁸⁰ do not abide by rental and tax legislations and requirements, and in most cases are unaware (as are their tenants) of the existing relevant legislation.⁸¹

42. The informal rental sector is a crucial component of the housing sector in developing countries and is also increasing today in many European cities,⁸² filling a gap created by the current housing policies that do not adequately address the housing needs of low-income households. Unfortunately, slum upgrading

⁷⁵ Kumar, "The research-policy dialectic" (see footnote 41 above), p. 664.

⁷⁶ C. Escallón, *Arrendamiento Alternativo Habitacional y Vivienda Popular en Colombia* (Universidad de los Andes y Alcaldía Mayor de Bogotá; see also A.G. Gilbert and others, *In Search of a Home: Rental and Shared Housing in Latin America*) (UCL Press and the University of Arizona Press, 1993).

⁷⁷ M. Grant, "Lodging as a migrant economic strategy in urban Zimbabwe", *Development Southern Africa*, vol. 24, No. 1, (March 2007), pp. 77-90; see also P. Amis and P. Lloyd eds., *Housing Africa's Urban Poor* (Manchester University Press, 1990); UN-Habitat, *Quick Guides for Policy Makers: Housing the Poor in African Cities 7 — Rental Housing — A Much Neglected Housing Option for the Poor* (Cities Alliance, 2011); M. Huchzermeyer, "Tenement city: the emergence of multi-storey districts through large-scale private landlordism in Nairobi", *International Journal of Urban and Regional Research*, No. 31 (2007), pp. 714-732.

⁷⁸ UN-Habitat, *Affordable Land and Housing in Africa* (see footnote 4 above), p. 48; see also L. Bank, "The rhythms of the yards: urbanism, backyards and housing policy in South Africa", *Journal of Contemporary African Studies*, vol. 25, No. 2 (2007), pp. 205-228; O. Crankshaw, A. G. Gilbert and A. Morris, "Backyard Soweto", *International Journal of Urban and Regional Research*, vol. 24, No. 4 (2000), pp. 841-857.

⁷⁹ Kumar, "Landlordism in Third World urban low-income settlements" (see footnote 67 above), pp. 753-782; Kumar, "Room for manoeuvre" (see footnote 44 above).

⁸⁰ In Uruguay, while 79 per cent of tenants in Montevideo had signed a written contract in 2006, 21 per cent had only a verbal agreement — see L. Macellaro "Estudio sobre el mercado de viviendas de alquiler en Uruguay" (Montevideo, 2010); "Caracterización del mercado de arrendamientos urbano para el segmento de la población de bajos ingresos: informe final de resultados", realizado para el Ministerio de Ambiente, Vivienda y Desarrollo Territorial, UN-Habitat First Initiative (Centro de Estudios de la Construcción y el Desarrollo Urbano y Regional, 2007). In Thailand, only a minority, 45 per cent, have a written contract. See also M. Morange, "Backyard shacks: the relative success of this housing option in Port Elizabeth", *Urban Forum*, No. 13, pp. 3-25.

⁸¹ J. E. Torres, "Estudio sobre el mercado de arrendamiento de vivienda en Colombia: informe final" (Bogotá, 2011), p. 12.

⁸² Emily Kelling and others, "London's backyard informality", workshop paper presented at a conference of Research Committee 43 (Housing and the Built Environment) of the International Sociological Association, Amsterdam, 10-12 July 2013.

programmes have largely ignored the impact on tenants and have sometimes even failed to notice that most target settlements even contain tenants.⁸³ In some cases, the upgrading programmes even prohibit owners from letting upgraded properties.⁸⁴ Such situations are incompatible with the obligation of States to promote the right to adequate housing, inter alia, by facilitating the "self-help" efforts of disadvantaged groups.⁸⁵ However, there are a few reliable programmes that include direct subsidies and cheap loans to owners who need to repair their properties and to owners who wish to extend their property to accommodate additional tenants.⁸⁶

7. Summary

43. While increasing access to homeownership for low-income households through credit has proved to lead to overindebtedness and housing crises, rental housing has the potential to promote a range of more affordable options, while reducing financial risk and enabling better mobility.

44. Adequate housing must be in a location that allows access to employment options and public services. This is particularly relevant to poor households since the financial costs of travelling to work can place excessive demands upon already limited budgets.⁸⁷ With the support of State intervention, through rent subsidies to low-income households, the provision of State land to low-income rental and other measures, a private rental sector has the potential to promote access to better located, adequate housing for low-income households in urban settings.

45. For low-income households, ensuring a high degree of security of tenure in the private rental market is of the utmost importance since poor tenants cannot afford the costs associated with a change of dwelling or with challenging evictions and cannot compete in a completely unregulated private rental market (even when receiving housing benefits). It is therefore also necessary to ensure that regulation and accountability are respected in order to prevent economic de facto evictions and to enable low-income households to access affordable rental housing in urban areas that are well located.

46. Evidence indicates that both demand- and supply-side subsidies for the private rental sector are more cost effective and less costly than subsidies for homeownership and are therefore more compatible with the obligation of States to make use of the maximum available resources in order to ensure the progressive realization of the right to adequate housing. A regulated and effective housing benefit system is necessary to ensure various aspects of the right to adequate housing, including affordability, non-discrimination and habitability, while also enhancing the opportunities for individuals to exercise a number of other human rights, including the right to work, the right to education and the right to health. In

⁸³ Kumar, "The research-policy dialectic" (see footnote 41 above), p. 668.

⁸⁴ E. Rojas, ed., *Building Cities: Neighbourhood Upgrading and Urban Quality of Life* (Inter-American Development Bank, 2010); see also F. Magalhães and F. di Villarosa, eds., *Slum Upgrading: Lessons Learned from Brazil* (Inter-American Development Bank, 2012).

⁸⁵ See Committee on Economic, Social and Cultural Rights General Comment No. 4, para. 10.

⁸⁶ Such as the "plan terrazas" programme implemented in the 1970s in Colombia. See T. Johnson, "Upward filtering of housing stock: a study of upward filtering of housing stock as a consequence of informal settlement upgrading in developing countries", *Habitat International*, No. 11, pp. 173 and 187.

⁸⁷ Committee on Economic, Social and Cultural Rights General Comment No. 4, para. 8 (f).

addition, the private (formal and informal) rental sector is better targeted to lower-income households (compared with housing finance schemes that mainly assist middle-income households) and therefore may assist States in complying with the obligation to give due priority to social groups living in unfavourable conditions. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others.⁸⁸

B. Collective forms of tenure

47. Common property is a regime that allocates a package of property rights to a group. Such rights may include ownership, management, use, exchange and access of shared resources.⁸⁹ The term "common property regime" refers to a set of institutions, regulations and management practices subject to collective decision-making. Such regimes are distinct from communal tenure, which refers more broadly to community-based tenure systems, in which some form of collective authority (for example, an extended family, clan or other social grouping) holds allocation rights.⁹⁰ The present section refers to common property tenure arrangements in urban settings that have been implemented in recent years in both developed and developing countries.

1. Housing cooperative systems

48. A housing cooperative is a legal association formed for the purpose of providing housing to its members on a continuing basis. It is owned, maintained and controlled by its members.⁹¹ Housing cooperatives are based on collective ownership and management and can take various forms, including tenure cooperatives (in which owns housing development are owned and the members own equity shares in the cooperative), rental cooperatives (in which members pay rent to the cooperative), finance cooperatives (in which the cooperative provides loans to members for building construction or repairs) and building cooperatives (wherein building construction is undertaken and land is developed on behalf of members). Some cooperatives combine two or more of those functions.⁹²

49. The classic cooperative model has evolved mainly in Europe, and the "Scandinavian" cooperative model, founded in 1923, is one of the most influential. In Sweden, cooperative housing accounted for 22 per cent of all housing in 2011.⁹³

⁸⁸ Ibid., para. 11.

⁸⁹ C. Hess and E. Ostrom, "A framework for analysing the microbiological commons", *International Social Science Journal*, No. 58, pp. 335-349; see also A. Fuys and others, "Securing common property regimes in a globalizing world: synthesis of 41 case studies on common property regimes from Asia, Africa, Europe and Latin America" (Rome, International Land Coalition, 2008), p. 82.

⁹⁰ J. W. Bruce, *Legal Bases for the Management of Forest Resources as Common Property* (Rome, Food and Agriculture Organization of the United Nations, 1999); see also Fuys and others, *Securing Common Property Regimes* (see footnote 89 above).

⁹¹ National Confederation of Cooperatives "Cooperatives in housing: starting housing projects — a guide for cooperatives starting a housing project" (Philippines, 2004).

⁹² Sukumar Ganapati, "Enabling housing cooperatives: policy lessons from Sweden, India and the United States", *International Journal of Urban and Regional Research*, vol. 34, No. 2 (2010), pp 365 and 368.

⁹³ S. Moreau and A. Pittini, *Profiles of a Movement: Cooperative Housing Around the World* (CECODHAS Housing Europe, 2012).

Swedish cooperative organizations have received significant state support since the 1950s, when housing subsidies were applied equally to all forms of tenure, including cooperatives.⁹⁴ The Swedish legislation⁹⁵ provides a clear legal framework for the operation of housing cooperatives by defining the legal status of the relevant associations, such as the Savings and Construction Association of Tenants (HSB) and the cooperative housing organization known as *Riksbyggen*, and of the tenant owners. Additional rules and regulations are adopted by the associations themselves with tenant majority approval.

50. In Latin America, a successful example of housing cooperatives on a national scale is the mutual aid cooperatives in Uruguay, which are promoted by the Federation of Mutual Aid Housing Cooperatives. The Uruguayan legislation recognizes collective tenure, and the regulation of the housing cooperatives is encompassed in the 1992 General Cooperative Law. Since 1965, around 600 Federation cooperatives have been consolidated in Uruguay, and around 20,000 families are living in houses and apartments built through mutual aid. Mutual aid cooperatives have been introduced and adapted in 14 Latin American and Caribbean countries over the past 20 years through various initiatives.⁹⁶

51. A recent form of cooperatives combining finance and building are community funds, which have been developed in Africa and Asia.⁹⁷ These funds work with group loans and/or savings in order to assist communities in financing land regularization and acquisition, infrastructure and service provision, and home improvements.⁹⁸ The Asian Coalition for Community Action programme has promoted community funds in Asia from 2009 to 2011, carrying out 111 housing projects in 15 countries, at a total cost of almost \$4 million; collective agreements were used in 36 of the projects.⁹⁹

52. A collective organization enables cooperatives to take on complex housing and infrastructure projects that would otherwise not be possible for an individual household. Community funds provide financial and technical support for the purchase of land parcels and communal infrastructure (such as roads, drainage, water and sanitation).¹⁰⁰ The process typically involves negotiations with other stakeholders, such as the original owners of the parcel and the Government.¹⁰¹ In the Scandinavian model, the “mother” (also known as “parent” or “secondary”)

⁹⁴ However, in recent years State support for cooperative housing has weakened as part of a housing commodification process. See Sukumar, “Enabling housing cooperatives” (see footnote 92 above), p. 374.

⁹⁵ The 1991 Cooperative Housing Act, the 1987 Cooperative Societies Act and the 1930 Tenant-Ownership Act.

⁹⁶ M. Solanas, “La Transferencia del Cooperativismo Uruguayo de Vivienda por Ayuda a Otras Latitudes: una Experiencia de Cooperación Internacional”, *Revista Vivienda Popular de la Facultad de Arquitectura de Montevideo* (2011).

⁹⁷ According to reply received from Thailand in response to the questionnaire on security of tenure sent by the Special Rapporteur on 22 March 2013, in reference to the Baan Mankong National Collective Housing Program that has benefited 600,000 households between 2003-2007.

⁹⁸ UN-Habitat, *Financing Urban Shelter* (see footnote 25 above), p. 99.

⁹⁹ S. Boonyabancha, “Baan Mankong: going to scale with ‘slum’ and squatter upgrading in Thailand”, *Environment and Urbanization*, vol. 17, No. 1 (April 2005); UN-Habitat, *Affordable Land and Housing in Asia* (Nairobi, 2011).

¹⁰⁰ UN-Habitat, *Financing Urban Shelter* (see footnote 25 above), p. 99.

¹⁰¹ Nilsson, “Overview of financial systems” (see footnote 31 above), p. 19; Erlend Sigvaldsen, “Key issues in housing microfinance” (Oslo, Nordic Consulting Group, 2010), pp. 16-17.

cooperative association is responsible for building housing developments, which are then sold to "daughter" (also known as "subsidiary" or "primary") cooperatives. Financial risk for members is limited to their daughter cooperative.¹⁰²

53. The collective structure also promotes affordability and security of tenure by enabling group loans or savings or, in some cases, assistance funds for temporary defaults by members. The collective organization and management of common areas and housing maintenance is also crucial to promoting affordability for low-income households.¹⁰³ In the Scandinavian model, homeowners will typically fund 75-80 per cent of the cost of a housing development, while the rest is covered by a loan taken by the daughter cooperative. Cooperative homeowners also benefit from a 30 per cent tax reduction on interest expenditures on either cooperative shares or properties. Tenants may be evicted by the cooperative board only in a limited number of circumstances. In the case of community funds, interest rates on loans are usually relatively low and loan periods are often long, up to 25 years.¹⁰⁴

54. The Uruguayan mutual aid cooperatives promote affordable housing through a collective process involving the future occupiers. Ownership, as well as responsibility for the mortgage and maintenance of the property is collective and indivisible.¹⁰⁵ Under the Federation of Mutual Aid Housing Cooperatives model, families can get access to collective housing loans without previous savings (particularly suitable for low-income households); the time they spend building the houses is considered to be down payment (15 per cent of public bank mortgage).¹⁰⁶ Members pay a monthly share of the collective mortgage, an additional fee to the Cooperative Fund for the maintenance of common spaces and services, and an assistance fund for members that are temporarily unable to pay to the cooperative due to various reasons (such as accident, loss of employment or death of bread winner).

55. In the Uruguayan model, security of tenure is ensured by a contract between the cooperative and the member ("contrato de uso y goce" of the Federation of Mutual Aid Housing Cooperatives), which is not time bound. Each family enjoys usufruct rights that can be inherited or sold back to the cooperative. The value of the member's share is paid back to him by the cooperative in two instalments over a period of three years and comprises the value of labour hours; maintenance of the common areas; the repaid amount of the loan; and the repaid interest. This prevents a high member turnover and protects the cooperative from gentrification processes.

2. Community land trusts

56. A community land trust is a form of common land ownership, wherein land is considered to be a commonwealth, and only structures and other improvements are considered private property. Community land trusts aim to remove land from the

¹⁰² National Confederation of Cooperatives, "Cooperatives in housing" (see footnote 91 above); see also HSB, "Useful information for HSB tenant owners" (2012) and "Welcome to HSB: a booklet for all those who have just move in" (2012).

¹⁰³ S. Blandy, J. Dixon and A. Dupuis, eds., *Multi-owned Housing: Law, Power and Practice* (Ashgate, 2010).

¹⁰⁴ Such as in the case of the community mortgage programme in the Philippines.

¹⁰⁵ B. Nahoum, *Una Historia Con Quincemil Protagonistas: Las Cooperativas de Vivienda por Ayuda Muta Uruguayas* (Montevideo, Intendencia Municipal de Montevideo, 2008).

¹⁰⁶ For instance, the Conjunto Intercooperativo, built between 1971 and 1975.

speculative real estate market; to provide access to land and housing to people who would otherwise be denied access; to expand long-term community control of land resources; and to preserve the affordability of housing permanently.¹⁰⁷

57. The large majority of community land trusts are organized essentially as “affordable housing trusts”, and will oversee the development, sale or rental, and maintenance of housing units to buyers or renters who will lease the land from the community land trust. Through the use of an inheritable ground lease (typically for 99 years), community land trusts define the rights and responsibilities of the individual as the owner of the structures, and the community as the owners of the land.¹⁰⁸ Usually, the community land trust is governed by a board of directors comprising one third leasers of the community land trust; one third residents from the surrounding community (that do not live on the leased properties of the community land trust) and one third individuals who represent the public interest.

58. Community land trusts have been expanding over the past 50 years, primarily in the United States¹⁰⁹ where, according to the national network, close to 250 were active as at June 2013. They also exist in the United Kingdom¹¹⁰ and Canada.¹¹¹ An increasing number of municipal governments are forming community land trusts as a progressive strategy for addressing affordable housing needs that cannot be met solely with public housing programmes. Chicago, United States, is perhaps the largest example of a municipal government forming a public community land trust.¹¹²

59. The main purpose of community land trusts is to lock the value of the land in order to preserve the long-term affordability of housing for low- and middle-income households. Such affordability and location aspects are therefore one of the main pillars of community land trusts, and purchase or rental prices are usually below market value (typically 20 to 65 per cent),¹¹³ essentially because the leaseholder only pays for the home and not the land. In exchange, homeowners accept limitations when reselling their homes, usually committing to a maximum 25 per cent profit of the original price paid. This allows future low- to moderate-income households to access the same property at an affordable cost and help the

¹⁰⁷ D. Diacon, R. Clarke and Silvia Guimaraes, *Redefining the Commons: Locking in Value through Community Land Trusts* (Coalville, United Kingdom, Building and Social Housing Foundation, 2005), p. 55.

¹⁰⁸ UN-Habitat, *Community Land Trusts: Affordable Access to Land and Housing* (2012), Global Urban Economic Dialogue (2005), pp. 18, 11-12; see also J. E. Davis, *The Community Land Trust Reader* (Cambridge, United Kingdom, Lincoln Institute of Land Policy, 2010).

¹⁰⁹ For example, the Champlain Housing Trust (Burlington, Vermont, United States) — Champlain Housing Trust bylaws, adopted 1 October 2006, amended 26 January 2008 and 31 January 2009; see also J. Libby, “The policy basis behind permanently affordable housing: a cornerstone of Vermont’s housing policy since 1987” (Vermont Housing and Conservation Board, 2009).

¹¹⁰ For example, Letchworth Garden in the United Kingdom. The Letchworth Garden City Heritage Foundation manages most of the city lands, and its assets were estimated to be around £117 million in 2012 (according to the Letchworth Garden City Heritage Foundation 2010/2011 corporate plan).

¹¹¹ For example, Milton Parc, Montreal, Canada. The trust is held by a co-owner union, *Syndicat de co-propriété*, and comprises 26 housing cooperatives and non-profit housing corporations.

¹¹² UN-Habitat, *Community Land Trusts* (see footnote 108 above), p. 18.

¹¹³ Community Partners for Affordable Housing, 2012, *Affordable Homes for our community*, Chicago.

community to resist gentrification processes and development-related displacement.¹¹⁴

60. Although community land trusts do not provide loans or financial mechanisms, they assist potential members and advise them on their best choices in relation to their financial situations, including training seminars and pre-purchase stewardship. Recent evidence from the United States indicates that members of community land trusts have been less affected by the subprime mortgage crises and subsequent foreclosure proceedings.¹¹⁵

61. However, research indicates that community land trusts have generally been able to address the needs of lower middle-income households (commonly with an income between 30-80 per cent below median income) but have not been able, except in rare occasions, to reach the poorest 15 per cent of the population.¹¹⁶ One of the main barriers to low-income households is the screening and selection process employed by most community land trusts, which include income documentation, credit records and job history and security.¹¹⁷

62. Unlike housing cooperatives, community land trust systems have yet to be incorporated into national legislation. Each community land trust develops its own unique financing approach for both operating costs and project costs, and these approaches often include combinations of public¹¹⁸ and private sources, and grants and loans.

3. Summary

63. The cases of community land trusts, cooperatives and community funds demonstrate the capacity of collective organizations to tailor housing solutions that adequately address security of tenure, affordability, location and availability of services and infrastructure in urban settings for low-income households.¹¹⁹

64. Although not all types of collective organizations are accessible to the poorest segments of society, there are numerous advantages to such a form of tenure, including: (a) the use of community leverage to compete with existing housing market forces; (b) cooperative and collective forms of tenure are inextricably linked to enhanced democratic participation, better access to information, and community-led governance; (c) both cooperatives and community funds provide their members with financial strength (through community loans or savings that enable low-income households better access to housing finance); (d) as opposed to the individual finance schemes detailed above, community organizations also have the ability to

¹¹⁴ UN-Habitat, *Community Land Trusts* (see footnote 108 above), p. 36.

¹¹⁵ In 2009, 30.56 per cent of sub-prime loans were at risk of being foreclosed, with over 90 days delinquency, compared with 7.01 per cent for prime loans and only 1.62 per cent for community land trust loans. See E. Thaden and G. Rosenberg, "Outperforming the market: delinquency and foreclosure rates in community land trusts", *Land Lines* (October 2010), pp. 2-7.

¹¹⁶ R. Greenstein and Y. Sungu-Eryilmaz, "Community land trusts: a solution for permanently affordable housing", *Land Lines* (January 2007), p. 10; see also J. E. Davis, and A. Stokes "Lands in trust, homes that last: a performance evaluation of the Champlain Housing Trust (Burlington, Vermont, Champlain Housing Trust, 2009), p. 39.

¹¹⁷ UN-Habitat, *Community Land Trusts* (see footnote 108 above), p. 23.

¹¹⁸ Such as housing trust funds — state, county or local governments establish a fund for low- to moderate-income housing assistance, often with a dedicated funding source.

¹¹⁹ Sukumar Ganapati, "Enabling housing cooperatives" (see footnote 92 above), p. 365.

control land and housing affordability by controlling land prices (community land trusts), providing increased economic resilience (through financial support to households that temporarily encounter financial difficulties (Federation of Mutual Aid Housing Cooperatives), protecting low-income households from the housing market volatility and by limiting economic displacement and gentrification.

65. Both cooperatives and community land trusts also promote affordable housing for the poor by taking on responsibility for the maintenance and rehabilitation of communal housing space, which is a heavy cost for the poor. By locking land and housing values, community land trusts and cooperatives also contribute to the overall stability of land market and housing affordability. Finally, the leverage of the community greatly enhances the ability of low-income household members to access housing that is well located in urban areas and to ensure security of tenure in these locations.

66. Collective forms of tenure clearly represent an effective form of self-help that may assist in the progressive realization of the right to adequate housing. In accordance with paragraphs 10 and 11 of General Comment No. 4 of the Committee on Economic, Social and Cultural Rights, States have an obligation to facilitate the activity of such mechanisms for housing production and allocation, particularly when evidence indicates that they can promote access to adequate housing for marginalized groups that would otherwise be excluded from the housing market. However, despite these clear advantages, to date collective tenure remains at a limited scale, mainly as a result of the lack of supportive legal, financial and institutional frameworks in most countries. Although community structures need a certain degree of autonomy in order to regulate the relationship between the members and the organization and preserve their decision-making autonomy, they also require supportive legal and institutional structures in order to enable their functioning. For example, the legal recognition of collective tenure is essential, as well as the possibility of taking on collective loans. In that context, it is crucial that the State provide urban land that is well located, in particular in densely populated urban settings, in order to support the ability of collective housing organizations to compete in the land market.

IV. Conclusion and recommendations

67. Housing policies have increasingly been reduced to housing finance systems to promote homeownership. Evidence indicates that housing policies based exclusively on facilitating access to credit for homeownership are incompatible with the full realization of the right to adequate housing for low-income households, as they fail to supply habitable and affordable housing to the poor that is secure and well located.

68. The Special Rapporteur calls for a paradigm shift from the financialization of housing to a human rights-based approach to housing policies. In that context, she makes the following recommendations:

- (a) States should promote various forms of tenure:
 - (i) A mixture of tenure solutions, including private and public rental and collective tenure, is essential for the promotion of access to adequate housing for the various segments of society and in order to shield

individuals and households from economic and financial shocks. Legal and institutional frameworks should be created to ensure security of tenure for all forms of tenure;

(ii) The design of housing policies should be based on an assessment of housing needs, taking into consideration the specific demographic, geographic, economic and social conditions in each region, and the characteristics of the various disadvantaged groups (including low-income households), their existing housing conditions and forms of tenure;

(iii) States should refrain from focusing their housing policies on finance schemes with predominantly regressive effects, such as mortgage interest rate subsidies or tax exemptions;

(b) Rental tenure should be encouraged:

(i) A well-functioning rental sector with both private renting and social components is critical to a sustainable housing system. States should therefore support and encourage the development of both a private and social rental sector;

(ii) States should adopt measures to encourage the construction and maintenance of a private rental sector, including by providing incentives for small-scale landlords (such as tax incentives and supply-based subsidies that stimulate private investment) and support the non-profit and community-based development of rental housing;

(iii) States should provide housing support mechanisms for low-income households or households with irregular income, including by providing rent allowances; establishing a housing benefit system and guaranteeing funds to cover the costs arising from the non-payment of rent and service payments of the most vulnerable; and providing tenancy protection and rent control legislation;

(iv) States should recognize and support the informal rental sector in informal settlements, and include in their housing programmes incentives and subsidies to assist small-scale landlords to expand and improve habitability in rental accommodation;

(v) States should encourage and support the use of standardized rental contracts, in order to reduce the number and severity of disputes between landlords and tenants. To that end, standard forms of contracts should be freely available and widely distributed and should not require notary approval;

(vi) Urban renewal and informal settlement upgrading programmes should take into account the rights of tenants and should be designed with their full participation;

(vii) States should encourage greater use of empty housing stock, by, inter alia, encouraging the rehabilitation of vacant homes, increasing taxation on unused properties and improving access to low-cost loan funds for people who require financial assistance to get empty properties back into use, including through rent;

(c) Collective forms of tenure should be encouraged:

(i) States should support cooperative, collective and communal forms of tenure by designing and investing adequate resources through, inter alia: legal recognition and protection of cooperative and collective ownership of land and housing in urban areas; and support for housing policy and financial mechanisms, including access to credit and State subsidies, tax benefits to collective institutions, State provision of technical assistance and urban land that is well located for collective housing organizations;

(ii) Cooperative and collective forms of tenure are inextricably linked to enhanced democratic participation and community-led governance. States should therefore support activities of civil society organizations that play a crucial role in the development and maintenance of collective forms of tenure, in particular for low-income groups.



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**Promotion and protection of human rights: human rights questions,
including alternative approaches for improving the effective
enjoyment of human rights and fundamental freedoms**

Elimination of all forms of religious intolerance

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, in accordance with Assembly resolution 67/179.

* A/68/150.



Interim report of the Special Rapporteur on freedom of religion or belief

Summary

In the present report, the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, provides an overview of his mandated activities since the submission of the previous report to the General Assembly (A/67/303), including his country visits, communications and other activities.

In the face of complicated conflicts in the interplay of freedom of religion or belief and equality between men and women, the Special Rapporteur has decided to focus the present report on the relationship between those two human rights, with the purpose of contributing to a systematic clarification. Existing conflicts in this area should always be addressed with empirical and normative precision. Without in any sense denying the reality of conflicting human rights concerns in the intersection of freedom of religion or belief and equality between men and women, the Special Rapporteur would like to point out that it remains important not to turn concrete conflicts between human rights issues into an abstract antagonism on the normative level itself. Unfortunately, the impression that freedom of religion or belief and equality between men and women allegedly constitute two essentially contradictory human rights norms seems to be widely shared. This can cause serious protection gaps. For instance, efforts to explore and create synergies between freedom of religion or belief and gender equality are sometimes ignored or even openly discouraged. Moreover, the abstractly antagonistic misconception of the relationship between freedom of religion or belief and equality between men and women fails to do justice to the life situation of many millions of individuals whose specific needs, wishes, claims, experiences and vulnerabilities fall into the intersection of both human rights, a problem disproportionately affecting women from religious minorities. The Special Rapporteur therefore emphasizes the significance of upholding a holistic perspective in conformity with the formula coined at the World Conference on Human Rights that "[a]ll human rights are universal, indivisible and interdependent and interrelated". Based on this holistic perspective, which deserves to be defended even in complicated and tense situations, he formulates a number of practical recommendations addressed to States and other stakeholders.

I. Introduction

1. The mandate of the Special Rapporteur on freedom of religion or belief was created by the Commission on Human Rights by its resolution 1986/20 and renewed by the Human Rights Council in its resolution 6/37. At the fourteenth session of the Council, Heiner Bielefeldt was appointed as mandate holder and assumed his function on 1 August 2010. The Council, in its resolution 22/20, renewed the mandate for a further period of three years and requested the Special Rapporteur to report annually to the Council and to the General Assembly in accordance with their respective programmes of work.

2. In section II of the present report, the Special Rapporteur provides an overview of his activities since the submission of his previous report to the General Assembly (A/67/303). In section III, he focuses on the freedom of religion or belief and equality between men and women. Section IV provides his conclusions and recommendations to various actors in this regard.

II. Activities of the Special Rapporteur

3. The Special Rapporteur conducted various activities between 1 August 2012 and 31 July 2013 pursuant to Human Rights Council resolutions 6/37, 14/11 and 22/20.

A. Country visits

4. The Special Rapporteur undertook a country visit to Sierra Leone from 30 June to 5 July 2013.¹ He expresses his appreciation to all his interlocutors and officials for the excellent cooperation they extended to him during his visit.

5. Additional country visits are currently being scheduled. This includes an agreed visit to Jordan in September 2013. During the reporting period, the Special Rapporteur also sent requests for country visits to the Governments of Bangladesh, Indonesia, Kazakhstan, Uzbekistan and Viet Nam. Updated information about the Special Rapporteur's visits and related requests is available on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR).²

B. Communications

6. The Special Rapporteur deals with individual cases or issues of concern brought to his attention. He sends allegation letters and urgent appeals to States seeking clarification on credible allegations of incidents and governmental action possibly incompatible with the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly resolution 36/55).

¹ The report of the visit to Sierra Leone will be presented to the Human Rights Council at its 25th session, in March 2014; the Special Rapporteur's statement, presented at the end of his visit, is available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13506.

² See www.ohchr.org/EN/HRBodies/SP/Pages/CountryandothervisitsSP.aspx.

7. Since the creation of the mandate, the Special Rapporteurs have sent more than 1,290 allegation letters and urgent appeals to a total of 130 States. The communications sent by the Special Rapporteur between 1 June 2012 and 28 February 2013 and the replies received from Governments before 30 April 2013 are included in the latest communications reports (A/HRC/22/67 and Corr.1 and 2 and A/HRC/23/51).

C. Other activities

8. The Special Rapporteur participated in a conference organized by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) on 1 October 2012, on developments and challenges that OSCE member States face in the context of freedom of religion or belief.

9. On 4 and 5 October, the Special Rapporteur participated in the final expert workshop organized by OHCHR, in Rabat, on how best to respond to advocacy of national, racial or religious hatred that constitutes incitement of discrimination, hostility or violence. The experts jointly adopted the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (see A/HRC/22/17/Add.4).

10. On 27 November 2012, the Special Rapporteur took part in the fifth session of the Forum on Minority Issues in Geneva. He spoke about the rights of religious minorities and presented recommendations on the positive measures that could be taken to protect and promote their rights.

11. On 12 and 13 December 2012, the Special Rapporteur attended the Office of the United Nations High Commissioner for Refugees (UNHCR) Dialogue on Protection Challenges, entitled "Faith and protection".

12. On 17 and 18 January 2013, during the session of the Working Group on the issue of discrimination against women in law and in practice, the Working Group had a preliminary discussion with the Special Rapporteur on the issue of gender equality and freedom of religion and belief.

13. On 21 February 2013, the Special Rapporteur took part in the high-level launching event in Geneva of the Rabat Plan of Action. On 22 February, he also participated in the seminar on "Preventing incitement to atrocity crimes: policy options for action".

14. On 27 and 28 February, the Special Rapporteur attended the fifth Global Forum of the United Nations Alliance of Civilizations, in Vienna, which focused on the theme "Responsible leadership in diversity and dialogue".

15. From 4 to 8 March 2013, the Special Rapporteur attended the twenty-second session of the Human Rights Council. During that week, he also participated in several side events and dialogues organized by various civil society organizations.

16. The Special Rapporteur held many meetings with Government representatives, religious or belief communities, civil society organizations and academic experts working in the area of freedom of religion or belief. In this context, he participated in national and international conferences and workshops, including in Berlin, Colombo, Geneva, London, Lusaka, Luxembourg, Oslo, Oxford (United Kingdom of Great Britain and Northern Ireland), Rabat, Salzburg (Austria), Tbilisi, Uppsala

(Sweden), Vienna and Yerevan. In addition, he held video conferences with stakeholders across different continents.

III. Freedom of religion or belief and equality between men and women

A. Introduction

17. Countless individuals are affected by human rights violations in the intersection of freedom of religion or belief and equality between men and women. While many such violations stem from stereotypical gender roles which are frequently also defended in the name of religion or belief, other violations may originate from stereotyped perceptions of individuals based on their religion or belief. Gender stereotypes and stereotypical pictures of believers often exist in tandem, a problem disproportionately affecting women from religious minorities. As a result, many women suffer from multiple or intersectional discrimination or other forms of human rights violations on the grounds of both their gender and their religion or belief.

18. Anti-discrimination programmes or other programmes aimed at promoting human rights do not always adequately address the complex problems existing in the intersection of freedom of religion or belief and women's right to equality. Measures undertaken to combat religious discrimination may implicitly follow a male understanding of the needs and requirements of concerned religious communities, while programmes aimed at eliminating discrimination against women may lack sensitivity in questions of religious diversity. The same can happen with human rights policies outside of the specific context of anti-discrimination programmes. To avoid the danger of persons affected by multiple or intersectional discrimination and related violations of their human rights remaining excluded from activities relating to the promotion and protection of human rights, such complex phenomena deserve systematic attention. On the normative level, this requires a holistic approach in dealing with the various grounds of discrimination as well as a holistic understanding of human rights in general.

19. The holistic understanding of human rights has found expression in a frequently cited principle formulated at the World Conference on Human Rights, held in Vienna in 1993, that "[a]ll human rights are universal, indivisible and interdependent and interrelated".³ The Special Rapporteur is furthermore guided by the insight formulated at the World Conference that all human rights be treated "globally in a fair and equal manner, on the same footing, and with the same emphasis".³ In other words, on the normative level, human rights norms must be interpreted in such a way that they are not corrosive of one another but rather reinforce each other. Upholding a holistic human rights approach has direct consequences for human rights practice, in particular for those numerous persons who are exposed to combined forms of vulnerability in the intersection of different human rights norms.

20. Of course, the holistic understanding of human rights does not give an a priori guarantee of practical synergies with regard to all human rights issues that come up

³ Vienna Declaration and Programme of Action, A/CONF.157/24 (Part I), chap. III.

in this context. It has been a general experience that issues promoted under different human rights norms can collide. This is obviously also the case in the interplay of the two human rights norms discussed in the present report, namely, freedom of religion or belief and equality between men and women.

21. The role of freedom of religion or belief within related conflicts is complex and is frequently misunderstood. Widespread misperceptions have even given rise to the idea that freedom of religion or belief and equality between men and women are norms standing in opposition to each other. However, although complicated conflicts in this area are obvious, it remains important not to draw wrong conclusions from this experience. In particular, one should not turn concrete conflicts between (seemingly or factually) competing human rights issues into abstract antagonisms on the normative level itself. This would be a systematic mistake. It would also mean to give up the holistic understanding of human rights, with the risk that the human rights approach in general might become ever more fragmented. This in turn would have detrimental effects, in particular for the human rights of many millions of persons whose problems fall in the intersection of freedom of religion or belief and equality between men and women.

22. In order to highlight the multifaceted practical problems and contribute to a clarification of important conceptual questions, the Special Rapporteur has decided to focus the present report on the relationship between freedom of religion or belief and equality between men and women. This is in accordance with his mandate which requests him to continue to apply a gender perspective in his activities.⁴ In doing so, the Special Rapporteur builds upon the work of his predecessors in their reports to the Commission on Human Rights, the General Assembly and the Human Rights Council.⁵

B. General observations on the role of freedom of religion or belief in the field of equality between men and women

1. The human person as rights holder

23. *Prima facie* it seems plausible to assume that freedom of religion or belief protects religious or belief-related traditions, practices and identities, since this is what the title of the right appears to suggest. This assumption, however, is misleading, because in line with the human rights approach in general, and article 1 of the Universal Declaration of Human Rights in particular, freedom of religion or belief always protects human beings in their freedom and equality in dignity and rights. To cite a frequently used short formula, freedom of religion or belief protects "believers rather than beliefs". Of course, both aspects are inextricably intertwined: no one can earnestly speak about believers without considering their beliefs and vice versa. And yet it remains true that human rights address that interrelatedness between believers and beliefs consistently from the angle of the human being. Hence it is only indirectly that religions or beliefs, encompassing their truth claims,

⁴ Human Rights Council resolution 6/37, para. 18 (d). See also Commission on Human Rights resolutions 1996/23, 1997/18, 1998/18, 1999/39, 2000/33, 2001/42, 2002/40, 2003/54, 2004/36 and 2005/40, as well as General Assembly resolutions 60/166 and 61/161.

⁵ See, for example, E/CN.4/2002/73/Add.2; A/HRC/4/21 (paras. 34-39); A/64/159 (paras. 59-63); and A/65/207 (paras. 14-16 and 69).

religious scriptures, normative rules, rituals and ceremonies, organizations and hierarchies, come into the focus of human rights.

24. For a discussion of the complex relationship between freedom of religion or belief and equality between men and women it is important to bear in mind the indirectness that characterizes the relationship between human rights and religions and beliefs. In the framework of human rights, legal recognition cannot be accorded to the particular contents of religions or beliefs, namely, their doctrines, truth claims, practices and value systems, among other aspects, but is due to human beings as the responsible actors who hold, profess, cherish and develop their various religious or belief orientations, as individuals and in community with others.

25. The consistent focus on the human person as rights holder does not mean to adopt an anthropocentric worldview in which the human being figures as "the measure of all things". For many (not all) people, religious convictions, spiritual values and norms that claim a transcendent origin constitute a most important part of their daily lives and possibly the backbone of their personal and communitarian identities. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states that "religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life". Thus, freedom of religion or belief serves the purpose of respecting and protecting this reality in the specific mode of universal human rights guarantees.

26. However, to take religions and beliefs in all their dimensions seriously also implies taking pluralism seriously, including sometimes irreconcilable differences in world views and practices. If the State protects the doctrinal and normative contents of one particular religion as such, this will almost inevitably lead to discrimination against adherents of other religions or beliefs, which would be unacceptable from a human rights perspective. It is not least for this reason that human rights epitomize a shift of focus from beliefs to believers, in order to appreciate existing religious or belief diversity on the basis of non-discrimination and equality. Accordingly, the human right to freedom of religion or belief does not protect religious traditions per se, but instead facilitates the free search and development of faith-related identities of human beings, as individuals and in community with others.

2. Synergies and conflicts

27. On the phenomenological level, the question of how freedom of religion or belief relates to gender issues does not find one general answer, but largely depends on how people actually make use of their human rights. Obviously, the ways in which individuals resort to their right to freedom of religion or belief differ widely. Freedom of religion or belief is a norm to which liberals and conservatives, feminists and traditionalists, and others, can refer in order to promote their various and often conflicting religious or belief-related concerns, including conflicting interests and views in the field of religious traditions and gender issues.

28. Freedom of religion or belief, in conjunction with freedom of expression, helps open up religious traditions to systematic questions and debates. In discourses on religious issues everyone should have a voice and a chance to be heard, from adherents of conservative or traditional interpretations to liberal critics or reform theologians. However, by also empowering groups who traditionally experience discrimination, including women and girls, freedom of religion or belief can serve as a normative reference point for questioning patriarchal tendencies as they exist in

different religious traditions. This can lead to more gender-sensitive readings of religious texts and far-reaching discoveries in this field. In virtually all traditions one can indeed find persons or groups who make use of their freedom of religion or belief as a positive resource for the promotion of equality between men and women, often in conjunction with innovative interpretations of religious sources and traditions. This accounts for the possibility of direct synergies between freedom of religion or belief on the one hand and policies for promoting the equal rights of women on the other. Impressive examples of initiatives undertaken by women and men of different religious persuasions clearly show that synergetic efforts in this regard actually exist and should not be underestimated.

29. At the same time, one has to face the reality of conflicting interests in this area. For instance, some religious community leaders have rejected anti-discrimination stipulations imposed by the State, in which they may see an undue infringement of their right to internal autonomy. There are also cases of parents objecting to gender-related education programmes becoming part of the school curriculum, since they fear this may go against their religious or moral convictions. Dealing with such complicated conflicts requires a high degree of empirical precision, communicative openness and normative diligence with a view to doing justice to all human rights claims involved.

30. Moreover, the Special Rapporteur notes with concern that such harmful practices as female genital mutilation, forced marriage, honour killings, enforced ritual prostitution or denying girls their rights to education are defended in the name of religious traditions. Such defence is frequently controversial within the various religious communities themselves, and many followers of the respective communities (possibly their overwhelming majority) may be heavily opposed to such practices and also voice their opposition publicly. If those still performing harmful practices try to invoke religious freedom for their actions, this must become a case for restricting the freedom to manifest one's religion or belief. The Special Rapporteur would like to reiterate what his predecessor pointed out in her final report to the General Assembly: "The Special Rapporteur strongly believes that the mandate needs to continue highlighting discriminatory practices that women have had to suffer over centuries and continue to do so, sometimes in the name of religion or within their religious community. It can no longer be taboo to demand that women's rights take priority over intolerant beliefs used to justify gender discrimination." (see A/65/207, para. 69). The current mandate holder fully shares the assessment formulated by his predecessor. Indeed, as a human right, freedom of religion or belief can never serve as a justification for violations of the human rights of women and girls.

31. When arguing for limitations of a right to freedom, it remains crucial to exercise empirical and normative diligence at all times. Sometimes supposed conflicts between freedom of religion or belief and equality between men and women may rest on mere conjectures. Moreover, restrictions on freedom of religion or belief cannot be legitimate unless they meet all the criteria prescribed for limitations in article 18, paragraph 3, of the International Covenant on Civil and Political Rights. The reasonable assumption that promoting equality between men and women always constitutes a legitimate purpose does not in itself suffice to justify restrictions; such restrictions must also have a legal basis, they must actually be conducive to pursuing the said purpose and one has to demonstrate that less restrictive means are not available. Finally, freedom of religion or belief strictly

prohibits any restrictions in the *forum internum*, that is to say, the freedom to have or to adopt a religion or belief of one's choice.

3. Practical relevance of a holistic approach

32. The reality of manifold and complicated conflicts in the field of freedom of religion or belief and equality between men and women has led some to the view that the two human rights norms themselves stand in opposition to one another. As a result, the relationship between these two norms may appear close to a simple zero-sum game: any progress concerning gender equality seems to indicate a defeat of religious freedom, and any insistence on freedom of religion or belief seems to hinder gender-related anti-discrimination policies, or so it is at times misperceived.

33. Not only are such antagonistic views mostly based on a total misunderstanding of freedom of religion or belief and a disregard of its human rights nature; they can also produce protection gaps with serious practical implications. One of the resulting problems is that the potential for synergies between freedom of religion or belief and promoting women's right to equality remains systematically underexplored. Existing human rights activities in this field do not receive the attention they need and deserve. Sometimes such activities are even delegitimized by antagonistic views which wrongly assume that gender-related anti-discrimination agendas would be weakened by integrating sensitivity for freedom of religion or belief or, vice versa, that work in defence of religious freedom would be diluted by combining it with the promotion of equality between men and women and related human rights issues.

34. Above all, antagonistic views of the two human rights norms would further diminish the prospects of persons whose human rights problems fall in the intersection of freedom of religion or belief and equality between men and women. Indeed, human rights violations in the intersection of the two norms are a reality for many women. One obvious example is forced conversion in combination with forced marriage. In a number of countries, women or girls from religious minorities unfortunately run the risk of being abducted, with the purpose of forcing them to convert to the mainstream religion, often in connection with an unwanted marriage. Another example, albeit much less extreme, concerns dress code regulations in public institutions which disproportionately target women from religious minorities, thus preventing them from achieving important professional or public positions.

35. Being frequently caught between gender stereotypes and stereotypical perceptions of their religious identities, many women from religious minorities feel exposed to the expectation that they have to choose one of two seemingly contradictory options: allegedly, they can either emancipate themselves by more or less abandoning their religious tradition, or they can keep their religious heritage, thereby forfeiting their claims to freedom and equality. Such an artificial antagonism, however, fails to do justice to women's multifaceted realities, experiences, challenges and wishes. Any assessment of presumed or factual conflicts in this area should therefore take seriously the complexities of women's life-worlds and appreciate their creative potential.⁶

⁶ One may assume that the same is true for individuals from the lesbian, gay, bisexual, transgender and intersex community, many of whom are religiously interested and practising, which is a reality so far largely unexplored.

C. Typological analysis of challenges in the intersection of freedom of religion or belief and equality between men and women

36. In the present chapter, the Special Rapporteur analyses practical challenges in the intersection of freedom of religion or belief and equality between men and women. The described phenomena and patterns are examples; they certainly do not cover the whole range of existing challenges as they may develop in ever new facets. To avoid a possible misunderstanding, the Special Rapporteur would like to underline from the outset that each case and each situation must always be examined carefully on their own merits.

1. Addressing religious stereotypes in conjunction with gender stereotypes

37. Overcoming discrimination against women is a paramount human rights obligation to be found in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and countless other binding human rights documents. The Convention on the Elimination of All Forms of Discrimination Against Women plays the pivotal role in this regard. In its article 2, States parties "condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women [...]".

38. Pursuant to article 5 (a) of the Convention, States parties are obliged to take all appropriate measures "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudice and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". To fulfil this obligation, States parties must critically address cultural practices that accord men and women unequal roles, positions and opportunities in family life, labour markets, public and political life and society at large. Examples include obstacles to women pursuing professional careers or attending institutions of higher education; restrictions on their right to travel; underrepresentation of women in public positions; obstacles to women's freedom to find a spouse of their own choice; child marriage, frequently amounting to marital rape; humiliating treatment of widows, including denial of their right to remarry a spouse of their own choice; female genital mutilation; rigid dress code regulations imposed on women against their will; male-child preference, sometimes leading to sex-selective abortion or female infanticide; non-acceptance of any way of life outside of a traditional family context; denigration of the image of women in public life, including in media and advertisements; violence against women, sometimes even leading to so-called "honour killings"; denial of property rights and of equal rights of succession; denial of the right to seek a divorce and exposure to the threat of unilateral repudiation; and the assumption that women generally cannot live without male protection, which may seriously hamper their freedom to lead their lives in conformity with their own wishes, convictions and plans.⁷ Needless to say, this list of examples is far from exhaustive. Discrimination based on stereotypical roles of men and women is

⁷ See relevant general recommendations of the Committee on the Elimination of Discrimination against Women, including No. 12 (1989) on violence against women; No. 13 (1989) on equal remuneration for work of equal value; No. 14 (1990) on female circumcision; No. 18 (1991) on disabled women; No. 19 (1992) on violence against women; No. 21 (1994) on equality in marriage and family relations; and No. 23 (1997) on women in political and public life.

one of the most widespread human rights violations worldwide. It can assume cruel forms and deprives many women and girls of their rights to life, freedom and respect for human dignity. The need for concerted action to eliminate such violations, including by addressing their cultural root causes, is more than obvious.

39. Deeply rooted cultural patterns of expected conduct of men and women are frequently interwoven with religious norms and practices. In many cases they even claim a direct religious justification. The previous mandate holder stressed that in many countries "gender discrimination is in fact founded on cultural and/or religious practices" and that a large number of reservations to the Convention on the Elimination of All Forms of Discrimination Against Women "have been made by States on exclusively religious grounds referring to a perception of society and the law in relation to women's personal status" (see E/CN.4/2002/73/Add.2, para. 58).

40. When dealing with this problem, one should take into account that the relationship between culture and religion in general shows manifold facets both between and within religious traditions. This topic is typically also controversial within religious communities themselves. While some members of a religious community may appreciate broad overlaps between religion and culture as something quite natural, others may fear that the specific profile of religious messages and norms becomes unrecognizable if religion and culture are simply amalgamated. Moreover, using a conceptual distinction between religion and culture has become one of the most important methodological tools for reformers, including feminist theologians, operating within different religious or belief contexts with the purpose of redefining the boundaries of religion and culture. It also plays a crucial role in projects of distinguishing core elements of religious messages and norms from traditional cultural practices, with a view to promoting women's human rights within their religious communities. For any analysis of conflicts between religious traditions and the human rights principle of equality between men and women it remains utterly important to bear in mind that religion and culture, albeit interwoven in manifold ways, are not identical and that their relationship can be exposed to critical questions and reform agendas, often based on initiatives that originate from the midst of religious communities themselves.

41. Unsurprisingly, State policies for eliminating deeply rooted gender stereotypes frequently come into conflict with persons, organizations or institutions that defend existing hierarchies between men and women. In situations in which such patterns are perceived as being based on religious prescriptions, this also frequently leads to conflicts with representatives and members of religious communities. There are in fact numerous examples of religious leaders opposing gender-related anti-discrimination policies. Although such opposition may mobilize parts of religious communities against anti-discrimination programmes, there may be other currents within the same communities who hold more moderate views or are openly supportive of broad anti-discrimination programmes. Taking interreligious and intrareligious pluralism into account is of paramount importance when dealing with conflicts in this field in order to find appropriate solutions and to do justice to the human beings involved in such conflicts.

42. Given the frequent experience of religiously motivated opposition and, at times, fierce resistance, some promoters of gender-related anti-discrimination policies may feel inclined to treat certain religions, or even religions in general, as mere obstacles in the development of societies free from discrimination. However,

such an attitude would be problematic for a number of reasons. It fails to do justice to the complex realities and wishes of many human beings, in particular women living in different religious communities. Although frequently suffering from discrimination within their religious communities, many women nonetheless feel attached to their religions and may wish their attachment to be recognized as part of their freedom of religion or belief. Moreover, internal differences, developments and dynamics often do not receive sufficient systematic attention. This in turn can lead to stereotypical perceptions of religions or beliefs which may further exacerbate existing prejudices against persons adhering to those religions or beliefs. Ample experience indicates that this danger disproportionately affects women from religious minorities. Indeed, it is a bitter irony that policies aimed at eliminating stereotypes in the field of gender may themselves produce or reproduce stereotypes and prejudices in a different area, namely in the area of religion or belief. There are even examples of right-wing populist or extremist movements utilizing elements of gender-related anti-discrimination programmes with the ill-concealed intention of stoking collective resentments against unwelcome religious minorities.

43. Freedom of religion or belief does not shield religious traditions, or religions as such, against criticism, nor does it protect members of religious communities from critical questions. However, States should contribute to the elimination of negative stereotypes against individuals on the basis of their religion or belief, in particular members of religious minorities. Stereotypical perceptions can lead to a depersonalization of the human person. By being subordinated to a seemingly closed collective mentality, individuals have few opportunities to make their personal views, interests and assessments heard. They seemingly lose their faces and voices, as it were. Obviously, such de-personalization goes against the spirit and the letter of human rights which empower human beings to express their convictions, views and interests freely and without discrimination. States are therefore obliged to develop effective strategies to eliminate stereotypes, including gender-related stereotypes and stereotypical images of persons based on their religion or belief. Education programmes, awareness-raising campaigns, interreligious and intercultural dialogue initiatives and other measures can help broaden horizons towards an appreciation of the real diversity and creativity of human beings in this broad field.

44. Policies for eliminating gender-related stereotypes, in fulfilment of State obligations under the Convention, should therefore be pursued in conjunction with policies for avoiding and dispelling stereotypical perceptions of persons based on their religion or belief, in keeping with the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

45. There is no inherent normative contradiction between those two tasks. Taking freedom of religion or belief into account in gender-related anti-discrimination agendas may *prima facie* lead to additional complications. However, there is ultimately no legitimate way to ignore the complex realities, wishes and claims of human beings whose problems fall in the intersection of freedom of religion or belief and gender equality. Freedom of religion or belief should thus be systematically integrated into gender related anti-discrimination programmes as an element of their own quality management. Vice versa, policies promoting freedom of thought, conscience, religion or belief should systematically integrate a gender perspective in order to uphold the universalistic aspirations that define the human rights approach in general.

2. Criteria for imposing limitations on freedom of religion or belief

46. Measures to eradicate violations of women's human rights necessarily include State-enforced prohibitions of harmful practices. An extreme example is female genital mutilation, which leads to lifelong and far-reaching health problems, as well as grave forms of traumatization. Whether this practice has religious root causes remains controversial and ultimately doubtful. However, religious leaders may play an important role by clarifying religious views and by publicly calling on their believers to end this cruel practice.⁸ The same holds true for forced marriages, a widespread practice sometimes justified in the name of religion, and at other times, challenged in the name of religion. Other examples of harmful practices include enforced "sacred prostitution", burning or other forms of ill-treatment of widows, honour crimes often perpetrated in a climate of impunity or in which such crimes are condoned, dowry killings and many manifestations of extreme disrespect. Whether they have a religious basis typically remains controversial between and within religious communities. Be that as it may, freedom of religion or belief clearly does not protect such cruel practices. If individuals or groups were to invoke their right to freedom of religion or belief in order to get permission to perform such harmful practices, this must become a case for restricting these manifestations of religion or belief, in conformity with the criteria laid down in article 18, paragraph 3, of the International Covenant on Civil and Political Rights.

47. Before resorting to restrictions on the freedom to manifest one's religion or belief, legislators or representatives of the judiciary should always analyse the respective cases with empirical and normative precision. However, States sometimes impose restrictive measures in a rather loose way, beyond the confines of article 18, paragraph 3, of the International Covenant. This may also happen in the context of gender-related anti-discrimination policies. Based on overly simplistic perceptions, according to which religions per se constitute obstacles to the development of societies free from discrimination, some States may even be tempted to turn the principle of *in dubio pro libertate* upside down by restricting in case of doubt manifestations of religion or belief without providing the required empirical and normative evidence.

48. The Special Rapporteur would like to reiterate in this context that when States wish to impose restrictions they always bear the burden of proof, both at the level of empirical evidence and at the level of normative reasoning. Furthermore, for limitations to be legitimate, they must meet all criteria set out in article 18, paragraph 3, of the International Covenant. Accordingly, limitations must be legally prescribed and they must be clearly needed to pursue a legitimate aim, the protection of "public safety, order, health, or morals or the fundamental rights and freedoms of others". In addition, restrictions must remain within the realm of proportionality which, *inter alia*, means they must be limited to a minimum of interference.⁹ Finally, the *forum internum* dimension of freedom of religion or belief does not allow for any restrictions whatsoever, according to article 18, paragraph 2, of the International Covenant.

49. A much discussed issue in the context of limitations of freedom of religion or belief concerns restrictions on the wearing of religious symbols, including

⁸ See A/HRC/4/21, para. 38 and E/CN.4/2002/73/Add.2, paras. 104-110.

⁹ See General Comment No. 22 of the Human Rights Committee, CCPR/C/21/Rev.1/Add.4, para. 8.

headscarves, turbans, kippas or religious jewellery, such as a cross attached to a necklace. In many cases those restrictions particularly affect women from religious minorities. Although there may be reasons for imposing limitations for specific situations, the Special Rapporteur has noted that some of the measures taken in this regard fail to meet all the requirements of article 18, paragraph 3, of the International Covenant. For instance, laws prohibiting the Islamic headscarf in public institutions are frequently based on conjectures that women do not wear such head garments of their own free will. The empirical evidence for these conjectures often remains questionable. Moreover, if there are some clear cases of impositions, this experience will not necessarily suffice to justify general or broad prohibitions of the headscarf in public life or by users of such public institutions as schools, universities or public administration.

50. Under the principle of proportionality, States have always to look for less far-reaching and less intrusive restrictions before issuing legislation that infringes on freedom of religion or belief. Another part of the proportionality test concerns the question of whether limitations are actually conducive to the legitimate purpose they are supposed to foster. It may happen that measures do not only fail to serve the said purpose; they may actually worsen the situation of many individuals, particularly women, for instance by further restricting their spaces of personal movement and infringing their rights to education and participation in public life.

3. Gender and sexuality in school education programmes

51. According to article 13 of the International Covenant on Economic, Social and Cultural Rights, every human being has the right to education. This has been confirmed in other important human rights documents, including in article 28 of the Convention on the Rights of the Child and article 24 of the Convention on the Rights of Persons with Disabilities. The right to education, *inter alia*, functions as an indispensable right for empowerment that facilitates the more effective use of many other human rights, such as freedom of expression, the right to work, participation in public life, cultural rights and freedom of religion or belief. In order to secure the right to education for everyone, States should make elementary school education mandatory, as requested by the Committee on Economic, Social and Cultural Rights and by the Committee on the Rights of the Child.¹⁰ Given the fact that in many countries or regions the right to education continues to be denied for girls and women, this provision has a particular significance for them.

52. To realize its potential for empowerment, education must also cover human rights education, which necessarily includes the two human rights norms under discussion here. Indeed, education plays a crucial role in all policies for eliminating stereotypical gender roles and ideas of inequality of men and women, and it is important to educate individuals about sexual and reproductive health issues and their human rights in this regard. Likewise, education is of great significance in policies for combating discrimination based on religion or belief by critically addressing existing stereotypes and prejudices in this field. The voices of women,

¹⁰ See Committee on Economic Social and Cultural Rights, General Comment No. 11 (1999), E/C.12/1999/4, paras. 1 and 6; and General Comment No. 13 (1999), E/C.12/1999/10, paras. 10 and 51; and Committee on the Rights of the Child, General Comment No. 7 (2005), CRC/C/GC/7/Rev.1, para. 28.

including their different and possibly conflicting assessments, should always be part of the broader picture when informing about religions and beliefs.

53. Within the broad field of education, school education warrants specific attention. Besides providing a place of learning in which students can realize their right to education, the school is also a place in which authority is exercised (see A/HRC/16/53, para. 23). In particular, children of a tender age typically experience the teacher as a person wielding a high degree of authority. In addition, students may be exposed to pressure from their peers. For some students, particularly those belonging to ethnic, linguistic, religious or other minorities, this harbours the risk of creating a vulnerable situation. Parents from minorities may furthermore fear that the school could alienate their children from the family, including from the religion of their family. All of this calls for systematic attention with a view to dispelling fears, building trust, avoiding risk situations and overcoming the vulnerable situations of students and their families.

54. From a normative perspective, school education falls in the focus of a number of human rights, including the right to education, minority rights, equality between men and women, and freedom of religion or belief. As a subcategory to freedom of religion or belief, article 18, paragraph 4 of the International Covenant on Civil and Political Rights demands respect for the "liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions". This provision should not be interpreted in isolation but should be read in conjunction with article 5 and article 14, paragraph 2, of the Convention on the Rights of the Child, which require parents and legal guardians to provide appropriate direction and guidance "in a manner consistent with the evolving capacities of the child". With regard to adolescents, the Committee on the Rights of the Child emphasizes that States parties should provide them "with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases".¹¹ The Committee furthermore insists that adolescents should "have access to appropriate information, regardless of [...] whether their parents or guardians consent".¹²

55. School curricula or other programmes addressing gender or sexuality issues have sometimes triggered resistance on the part of parents who fear that this might go against their moral convictions. Quite frequently, such opposition results from religious or other conscience-based positions, thereby possibly becoming an issue under freedom of religion or belief. There is no general recipe for handling such conflicts in practice. Each individual case requires a careful analysis of the specific context and of the human rights norms invoked by the conflicting parties. One should bear in mind that neither the right to education, including education "in the spirit of ... equality of sexes",¹² nor the right to freedom of religion or belief can be dispensed with, since both have the status of inalienable human rights. It is always advisable to try to prevent or de-escalate conflicts, for instance by training teachers, dispelling mistrust and misunderstandings and establishing outreach programmes towards particular communities.

¹¹ Committee on the Rights of the Child, General Comment No. 4, CRC/GC/2003/4, para. 28.

¹² Article 29, para. 1 (d), of the Convention on the Rights of the Child.

56. The Special Rapporteur would like to reiterate in this context that, according to article 18, paragraph 2, of the International Covenant, the *forum internum* dimension of freedom of religion or belief receives unconditional protection and does not allow any restrictions or infringements, for any reason.¹³ Even the undeniably significant aim of promoting gender equality and using school education for that purpose cannot justify forms of teaching that may amount to violation of a student's *forum internum*. States are therefore obliged to exercise due diligence in this area, for instance by sensitizing teachers, employing professional mediators and establishing suitable monitoring mechanisms.

4. Religious institutions

57. Freedom of religion or belief also covers the right of persons and groups of persons to establish religious institutions that function in conformity with their religious self-understanding. This is not just an external aspect of marginal significance. Religious communities, in particular minority communities, need an appropriate institutional infrastructure, without which their long-term survival options as a community might be in serious peril, a situation which at the same time would amount to a violation of freedom of religion or belief of individual members (see A/HRC/22/51, para. 25). Moreover, for many (not all) religious or belief communities, institutional questions, such as the appointment of religious leaders or the rules governing monastic life, directly or indirectly derive from the tenets of their faith. Hence, questions of how to institutionalize religious community life can have a significance that goes far beyond mere organizational or managerial aspects. Freedom of religion or belief therefore entails respect for the autonomy of religious institutions.

58. It is a well-known fact that in many (not all) denominations, positions of religious authority, such as bishop, imam, preacher, priest, rabbi or reverend, remain reserved to males, a state of affairs that collides with the principle of equality between men and women as established in international human rights law. Unsurprisingly, this has led to numerous conflicts. While the Special Rapporteur cannot provide a general recipe for handling such conflicts in practice, he would like to point to a number of relevant human rights principles and norms in this regard.

59. It cannot be the business of the State to shape or reshape religious traditions, nor can the State claim any binding authority in the interpretation of religious sources or in the definition of the tenets of faith. Freedom of religion or belief is a right of human beings, after all, not a right of the State. As mentioned above, questions of how to institutionalize community life may significantly affect the religious self-understanding of a community. From this it follows that the State must generally respect the autonomy of religious institutions, also in policies of promoting equality between men and women.

60. At the same time, one should bear in mind that freedom of religion or belief includes the right of internal dissidents, including women, to come up with alternative views, provide new readings of religious sources and try to exercise influence on a community's religious self-understanding, which may change over time. In situations in which internal dissidents or proponents of new religious

¹³ See also CCPR/C/21/Rev.1/Add.4, para. 3.

understandings face coercion from within their religious communities, which sometimes happens, the State is obliged to provide protection. It should be noted in this regard that the autonomy of religious institutions falls within the *forum externum* dimension of freedom of religion or belief which, if the need arises, can be restricted in conformity with the criteria spelled out in article 18, paragraph 3, of the International Covenant, while threats or acts of coercion against a person may affect the *forum internum* dimension of freedom of religion or belief, which has an unconditional status. In other words, respect by the State for the autonomy of religious institutions can never supersede the responsibility of the State to prevent or prosecute threats or acts of coercion against persons (e.g., internal critics or dissidents), depending on the circumstances of the specific case.

61. In addition, freedom of religion or belief includes the right to establish new religious communities and institutions. The issue of equality between men and women has in fact led to splits in quite a number of religious communities, and meanwhile, in virtually all religious traditions, reform branches exist in which women may have better opportunities to achieve positions of religious authority. Again, it cannot be the business of the State directly or indirectly to initiate such internal developments, which must always be left to believers themselves, since they remain the relevant rights holders in this regard. What the State can and should do, however, is to provide an open framework in which religious pluralism, including pluralism in institutions, can unfold freely. An open framework facilitating the free expression of pluralism may also improve the opportunities for new gender-sensitive developments within different religious traditions, initiated by believers themselves.

5. Protection gaps in family law

62. Religions and belief systems frequently include normative rules regulating community life. Communitarian norms originating from religious or other conscientious convictions are generally covered by freedom of religion or belief which, inter alia, protects "practice" in the broad sense of the word. However, it is important to bear in mind that this happens in the indirect mode that characterizes the human rights approach in general. As explained earlier, human rights protection cannot be directly accorded to religious norms or value systems as such. Rather, human rights empower human beings as rights holders, inter alia by facilitating the free profession of their normative convictions and by enabling them to organize their community life in conformity with their religious and ethical persuasions. States should create suitable conditions for religious or belief communities in this regard, while at the same time bearing in mind the rights of individuals who should be able to develop their own life plans and to express their personal convictions, including critical and dissenting views. This is not an easy task.

63. Additional complications emerge in States that directly enforce religious norms in certain areas of society, particularly norms concerning issues of marriage, family life, child custody, divorce and inheritance. Denominational family laws and personal status laws enforced by the State are a reality in many countries. They mostly reflect traditional understandings of gender roles connected with unequal rights of men and women. Many such denominational family laws may restrict women's rights to choose a spouse according to their own wishes; they may reflect unequal rights of men and women in questions of divorce, sometimes even permitting the husband to repudiate his wife unilaterally; they may furthermore

assume unequal rights concerning family property and inheritance; they may give the husband a privileged legal position in issues of child custody; and some of these laws allow men to contract polygamous marriages.

64. While from the perspective of equality between men and women the critical focus will naturally fall on discriminatory gender roles existing in many denominational family laws, one also has to address the problem of State enforcement of religious norms. The enforcement of religious norms by State agencies necessarily gives rise to critical questions from the perspective of freedom of religion or belief, which is a right of human beings, not of States. In most (not all) such systems, State enforcement of denominational family laws accommodates a certain degree of religious pluralism. Accordingly, members of different religious communities, including recognized minorities, can regulate their family-related legal affairs in conformity with the normative precepts of their own religious traditions. In spite of pluralistic conceptualizations, however, the element of State enforcement of denominational family laws remains problematic from the perspective of freedom of religion or belief. Although each of the existing systems would require an assessment based on their specific merits, systems of State enforced denominational family laws typically fail to do justice to the human rights of persons living outside of the recognized religious communities, for example atheists or agnostics, members of small religions or new religious movements. However, as the Human Rights Committee has pointed out, article 18 of the International Covenant "protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions."¹⁴

65. Moreover, individuals may change their religious orientations. The freedom to do so constitutes an integral part of the *forum internum* dimension of freedom of religion or belief. However, this right can hardly be appropriately accommodated within a system of State-enforced denominational family laws. Many of the resulting problems concern women. For instance, it happens that women stemming from religious minorities who have converted in the context of a marriage wish to reconvert to their previous religion when the marriage breaks down. When trying to do so, they may encounter enormous difficulties in securing the right to have custody of their children. Losing custody of a child can be one of the worst experiences for a parent. This is only one example of serious human rights problems in this field in which violations of freedom of religion or belief and discrimination against women coincide.

66. It should be noted in this context that there have also been cases of custody denials based on prejudices against certain religious minorities within secular family law systems. This shows the need for sensitizing judges and other professionals dealing with such matters in all systems of family law. At the same time, there is a clear need for structural reforms in order to close relevant protection gaps. What is required in order to overcome the risk of human rights violations in this important field is family law systems that unequivocally respect the equality of men and women while at the same time doing justice to the broad reality of diversity of religion or belief, including persuasions beyond the realm of traditionally

¹⁴ See CCPR/C/21/Rev.1/Add.4, para. 2.

recognized religions and also bearing in mind the human right to change one's religion or belief. Again, this presupposes a holistic understanding of freedom of religion or belief and equality between men and women as mutually reinforcing human rights norms.

IV. Conclusions and recommendations

67. The relationship between freedom of religion or belief and equality between men and women displays many facets and is exposed to numerous political, jurisdictional, theological and philosophical controversies. In the face of conflicting human rights concerns put forward in the name of freedom of religion or belief and/or in the name of equality between men and women, the two human rights norms themselves are sometimes perceived as standing in general opposition to one another. While acknowledging the reality of complicated conflicts in this field, the Special Rapporteur emphasizes that one must not draw the wrong conclusions from this experience. In particular, it would be problematic to turn concrete conflicts between different human rights issues into an abstract antagonism on the normative level itself.

68. Unfortunately, the idea that freedom of religion or belief and equality between men and women represent essentially contradictory human rights norms seems to be widespread and has even gained currency in parts of the larger human rights community. As a result, possible synergies between freedom of religion or belief and equality between men and women remain underexplored. Even worse, existing human rights work in this field is sometimes openly discouraged or delegitimized. Moreover, an abstractly antagonistic construction of the two human rights norms cannot do justice to the needs, wishes, experiences and specific vulnerabilities of many millions of women whose life situations falls within the intersection of discrimination on the grounds of their religion or belief and discrimination on the ground of their sex or gender. This problem disproportionately affects women from religious minorities.

69. In keeping with the formula coined at the World Conference on Human Rights that "[a]ll human rights are universal, indivisible and interdependent and interrelated", the Special Rapporteur underlines the positive interrelatedness of freedom of religion or belief and equality between men and women. Upholding this holistic approach even in complicated situations is important for a number of practical reasons: it encourages the search for synergies in this area and facilitates an appreciation of sufficiently complex human rights approaches; it provides the horizon for coping appropriately with perceived or factual conflicts in a manner that does justice to all human rights norms involved in such conflicts; and it is the precondition for systematically addressing the human rights concerns of persons whose specific problems and vulnerabilities fall in the intersection of different human rights norms.

70. Abstractly antagonistic constructions of the relationship between freedom of religion or belief and equality between men and women are often based on a misunderstanding of the human rights nature of freedom of religion or belief. As a human right, freedom of religion or belief does not protect religions per se (e.g. traditions, values, identities and truth claims) but aims at the

empowerment of human beings, as individuals and in community with others. This empowerment component is something which freedom of religion or belief has in common with all other human rights. Only on this basis is it possible to develop and defend a holistic understanding of the complex interplay between freedom of religion or belief and equality between men and women.

71. In discourses on contentious religious issues, everyone should have a voice and everyone should have a chance to be heard. However, by also empowering groups who traditionally experience discrimination, including women and girls, freedom of religion or belief can serve as a normative reference point for projects that challenge patriarchal tendencies as they exist in virtually all religious traditions. This can lead to more gender-sensitive readings of religious sources and far-reaching discoveries in this field.

72. When dealing with supposed or factual problems in the intersection of freedom of religion or belief and gender equality, the existing diversity of human beings must always be taken seriously. This includes an awareness of interreligious as well as intrareligious pluralism. The voices of women, including their different and possibly conflicting assessments, should always be part of the broader picture. Failure to recognize existing and emerging pluralism frequently leads to stereotypes, which in turn can become a source of human rights abuses.

73. Integrating a gender perspective into programmes designed for protecting and promoting freedom of religion or belief is a requirement that ultimately follows from the universalistic spirit of human rights. Vice versa, integrating sensitivity for issues of freedom of religion or belief broadens and solidifies the human rights basis of gender-related anti-discrimination programmes.

74. In this spirit the Special Rapporteur formulates the following recommendations addressed to different stakeholders, including States, civil society organizations, religious or belief communities, media representatives and persons in charge of education:

(a) States should ratify all core international human rights instruments, including the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. They are also encouraged to withdraw existing reservations, including any reservations with regard to religious traditions of the country. The interpretation of religious traditions is not the business of the State and should be left to the followers of the various convictions, who are the rights holders of freedom of religion or belief;

(b) States and other stakeholders should search for practical synergies between freedom of religion or belief and equality between men and women and encourage positive developments in this regard. In situations of perceived or factual conflicts, those in charge of taking legislative, policy or juridical decisions must do justice to all human rights issues involved, which implies upholding a holistic human rights understanding even in complicated situations. Taking interreligious and intrareligious pluralism into account is of paramount importance when dealing with conflicts in this field in order to find appropriate solutions and to do justice to all persons involved in such conflicts;

(c) States and other stakeholders should develop effective strategies to eliminate negative stereotypes, including gender-related stereotypes as well as stereotypical depictions of persons based on their religion or belief. This requires a holistic human rights approach in order to avoid measures employed to combat stereotypes in one area inadvertently producing or reinforcing negative stereotypes in another area;

(d) Policies designed to empower individuals exposed to gender-related discrimination cannot claim credibility unless they pay careful attention to the self-understandings, interests and assessments voiced by the concerned persons themselves, including women from religious minorities. This principle should always be observed, in particular before setting legislative or jurisdictional limits to a right to freedom, for example the right to wear religious garments;

(e) Legislative or jurisdictional restrictions on freedom of religion or belief deemed necessary for eradicating harmful practices and for promoting equality between men and women must be undertaken with the appropriate degree of empirical and normative diligence and must meet all criteria laid down in article 18, paragraph 3, of the International Covenant on Civil and Political Rights;

(f) States and other stakeholders should reinforce educational efforts in order to promote respect for diversity, including diversity in the areas of gender and religion or belief. In the process of designing and implementing educational programmes, concerned persons should be consulted and should have a chance to take an active role;

(g) Educational programmes to promote respect for diversity should become part of the regular school curriculum. In this regard, special attention should be given to the possible vulnerability of students, in particular children from religious minorities. In addition, the liberty of parents and legal guardians to educate a child in conformity with their own moral or religious convictions must be respected, while they also have to provide appropriate direction and guidance in a manner consistent with the evolving capacities of the child;

(h) Outreach programmes towards certain religious communities and the employment of mediators can help to build trust between the school and religious communities, which may be important for dispelling misunderstandings and prevent conflicts around issues of gender equality and ethical norms based on religious or other convictions. Fears expressed by students or parents, even if seemingly based on misunderstandings, should be taken seriously and deserve respectful responses;

(i) States should identify and close human rights protection gaps in personal status laws, including denominational family laws, which disproportionately affect women from religious or belief minorities. The purpose must be to create family law systems that fully respect equality between men and women while at the same time do justice to the broad reality of religious or belief diversity, including persuasions that go beyond the realm of traditionally recognized religions;

(j) States should provide an open framework in which existing and emerging religious pluralism can unfold freely and without discrimination. Ensuring free expression of pluralism may also improve the opportunities for

new gender-sensitive developments within different religious traditions, which cannot be initiated by the State but must be left to the respective believers themselves who are the rights holders in the context of freedom of religion or belief.